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ABSTRACT

This document focuses on cases brought by Minnesotans to the U.S. Supreme Court. The five lessons featured are designed to provide secondary classroom teachers with material needed to teach each unit. Lessons cover Supreme Court proceedings, free press issues, freedom of religion, abortion rights, and privilege against self-incrimination. Instructions and materials for conducting mock trials as well as an appendix containing the Bill of Rights, U.S. Constitution, and Minnesota Constitution conclude the volume. (RJC)

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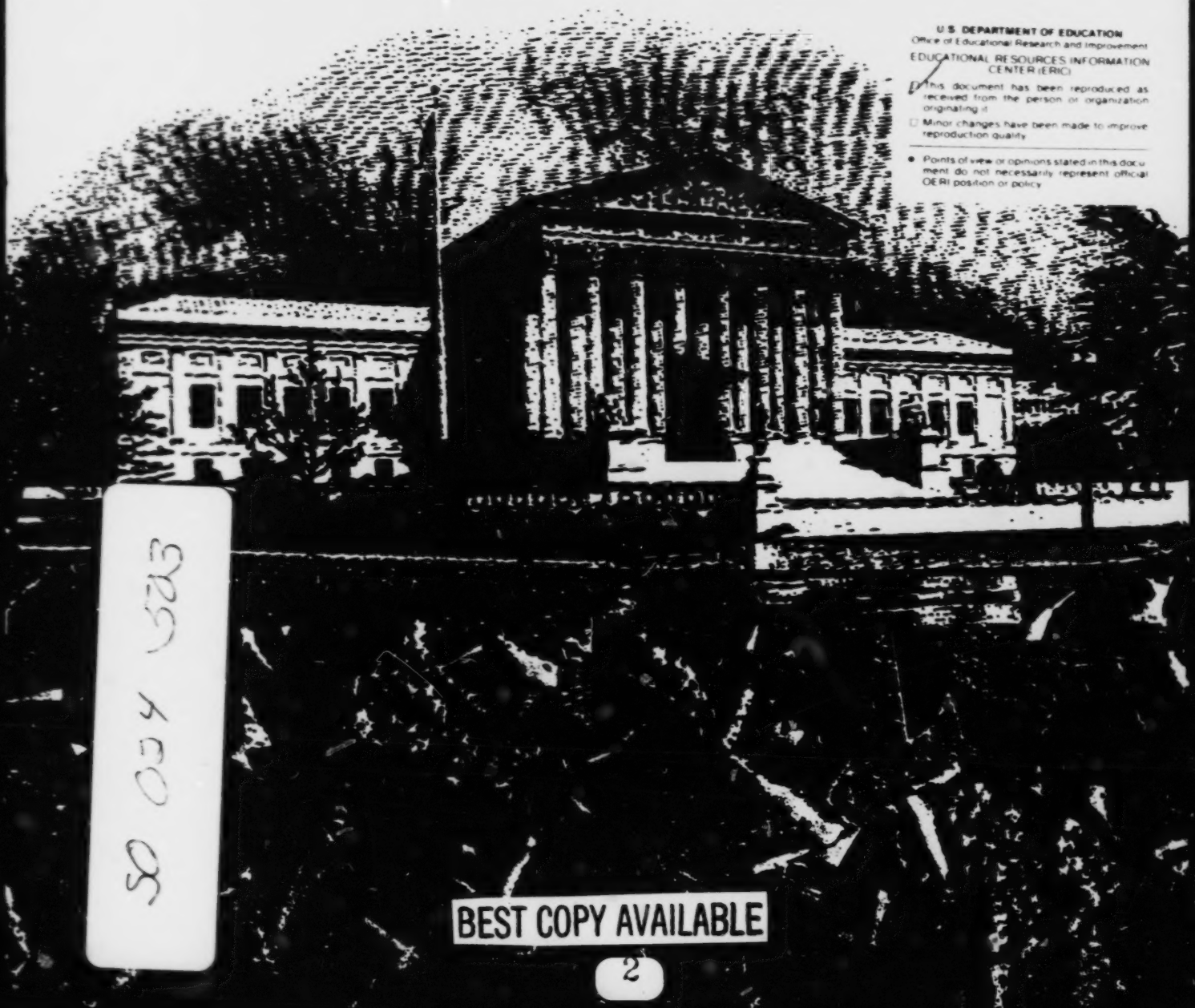
Minnesota in the Supreme Court

Lessons on Supreme Court Cases Involving Minnesotans



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Minnesota in the Supreme Court

Lessons on Supreme Court Cases Involving Minnesotans

Minnesota Center for Community Legal Education
Hamline University School of Law

Hamline UNIVERSITY

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Minnesota in the Supreme Court

Lessons on Supreme Court Cases Involving Minnesotans

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Bill of Rights, U.S. Constitution

MN Constitution

Introduction

The journey to the United States Supreme Court is one that is taken by very few Americans. Because most people question the power of an individual to protect his or her constitutional rights in our complex society, only a few have had the courage and perseverance to pursue a belief in their rights all the way to the U.S. Supreme Court.

The trip to the U.S. Supreme Court is not an easy one, and the route taken is not always the same. Cases can originate in the state court system, traveling from state district court to Minnesota Court of Appeals to the Minnesota Supreme Court, and then on to the U.S. Supreme Court. Or they can first be tried in U.S. District Court, with appeals brought to the Eighth Circuit Court of Appeals and ending with the U.S. Supreme Court. However, in all cases involving a constitutional issue, the question before the U.S. Supreme Court is the same. Did the state or federal government act in a way that violated the constitution?

To answer this question, the Court must know what the Constitution says and what it means. Herein lies the problem. Although understanding the meaning of some parts of the Constitution is fairly easy because the language is quite specific and the meaning is clear (for example, a person must be 35 years old to be president), other parts require continuing interpretation. For example, what does a free press mean?

The Framers of the Constitution knew that determining the meaning of some parts of the Constitution would be a continuing struggle throughout the history of our country. Today, as has been the case for the last 200 years, the Supreme Court Justices disagree about interpretation, and for this reason, many important decisions have been made by a majority vote of five to four of the nine justices.

In making decisions, justices tend to be influenced by many considerations, including their interpretations of the language of the Constitution and the intent of the framers, the precedents established by previous cases, current social policies and political and economical concerns, and personal beliefs. Throughout all of this, the justices must maintain as their overriding concern the continued commitment to both the language and the spirit of the Constitution.

As former Chief Justice Warren Burger said in *INS* v. *Chadha* (1983),

". . .if a challenged action does not violate the Constitution, it must be sustained . . . By the same token, the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution."

Introduction cont.

The cases selected for this publication arise out of conflicts between Minnesotans and state or federal government. Although at first glance, the cases may not seem terribly significant, they have each clarified the meaning of part of the constitution for all of us, and in this way, they form the backdrop for a future constitutional challenge. Our constitution lives through the vigilance of our people. If we remain forever vigilant, the American constitutional system will continue to carve a path to justice.

Overview

This publication focuses on cases brought by Minnesotans to the U.S. Supreme Court. Because our search for Minnesota cases did not result in a balanced list, there was no attempt to cover any particular areas of the Constitution. Rather, an effort was made to find interesting stories with important legal results.

The lessons are designed to provide secondary classroom teachers with everything needed to teach each unit. Feel free to make student copies of anything included.

It has become our practice to publish curriculum materials in three-ring binders so that teachers can supplement the lessons and we can add materials as needed. If you find a case you believe would contribute to this collection, share your information with us and we will attempt to add it.

We greatly appreciate the support we receive from teachers throughout Minnesota. We admire their commitment, energy, and courage. Keep up the good work.

Acknowledgements

This publication was made possible by the work of many. I wish to express my sincere appreciation to Kitty Atkins, Lynn Gresser, Joe Daly, Randy Peterson, the helpful folks in Hamline's Law Library, and Brian Johnson.

But most of all, I thank Debra. Her dedication is inspiring. She pushes, she probes, she listens. And throughout all, she maintains her health and a sense of humor, a remarkable feat. I am eternally grateful.

Jennifer D. Bloom
Director
Minnesota Center for Community Legal Education

The U.S. Supreme Court

The framers of the Constitution, through Article III, called for the creation of a Supreme Court and a federal judiciary, but left to members of Congress the task of spelling out the details, which they did in the Judiciary Act of 1789. Under the act, district courts were created in 13 major cities, with circuit courts established to serve the other areas of the country. Above these, Congress placed the Supreme Court.

The first session of the Supreme Court was on February 1, 1790 in the Royal Exchange in New York City. However, only three justices had reached New York, and the court was adjourned. Required by law to sit twice a year, it began its first term with a crowded courtroom and an empty docket. For the first three years, the court had almost no business at all. During the first term, the justices appointed a court crier and a clerk and admitted lawyers to the bar, but heard no cases. The first Supreme Court case of consequence concerned the pension claims of veterans of the Revolutionary War.

Meeting infrequently, the justices often held court in taverns in New York and Philadelphia. Later, court convened in a remote basement room in the north wing of the Capitol. Just because there were no cases to hear did not mean the court was not busy. The Judiciary Act of 1790 required the justices to travel twice each year to remote areas of the country to preside over the circuit courts. "Stagecoaches jolted the Justices from city to city. Sometimes they spent 19 hours a day on the road. An example of the hazards of travel by coach, Justice John Marshall's death was hastened as a result of injuries suffered in a stagecoach crash while he was riding circuit." *Equal Justice Under Law*

The Constitution says nothing about the size of the Supreme Court. At first, there were six members: one chief justice and five associate justices. For more than 100 years, the Supreme Court has consisted of one chief justice and eight associate justices. The lifetime appointment of the chief justice has been considered to have a greater historical impact than does the Presidency.

The judiciary was considered to be the least important branch of government by the framers. In fact, they thought it so insignificant that when the federal government moved to Washington in 1800, the capitol architects did not design or build a special place for the court to meet. Until moving to its current home in 1935, the Court used the old Senate chambers after the Senate moved to its new chambers in the north wing of the Capitol in 1859.

Although the importance of the Court has changed over the past 200 years, it's role has not. The Court's duty is to answer questions in "cases and controversies." (Article

III, Section 2) This means that the court can only hear cases that deal with important legal issues in actual disputes with parties on both sides who have stakes in the outcome (have been damaged, etc.). Because of this requirement, the court is not able to issue advisory opinions. This principal was laid down in 1793 when the Supreme Court refused President Washington's request for advisory opinions on questions dealing with American neutrality arising out of the war between England and France.

The U.S. Supreme Court has the power to accept or reject cases brought to it for hearing. Through a ***"writ of certiorari,"*** an individual asks the U.S. Supreme Court to review a decision of a lower court. If the Court agrees to hear the case, if they ***"grant certiorari,"*** both sides to the dispute are given the opportunity to present their arguments to the Court.

Today, there are nine justices on the Court, eight men and one woman: Chief Justice William Rehnquist and Associate Justices Harry Blackmun, Thurgood Marshall, John Paul Stevens, Byron White, Sandra Day O'Connor, Anthony Kennedy, Antonin Scalia, and David Souter.

Each year the Court meets from the first Monday in October through June. The Court is in session for two weeks each month, when it hears oral arguments, and in recess for two weeks, when it decides petitions, researches cases, and write opinions. Six justices must participate in each decision, which is then decided by a majority of those participating. If there is a tie vote, the decision of the lower court stands.

The Court's schedule is very predictable. Exactly at 10:00 a.m. Monday through Thursday, the curtains are parted in the courtroom allowing the Justices to enter. The clerk cries out:

> ***"Oyez, Oyez, Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court.***

The Court usually hears two cases before noon and two cases after lunch. When the Court is in recess studying appeals, petitions, and writing opinions, the justices meet in conference regularly. These meetings are strictly confidential. There are no clerks, no stenographers, no tape recorders. If it is necessary to obtain materials from outside the conference room or to answer the door, the most recently appointed judge acts as doorkeeper.

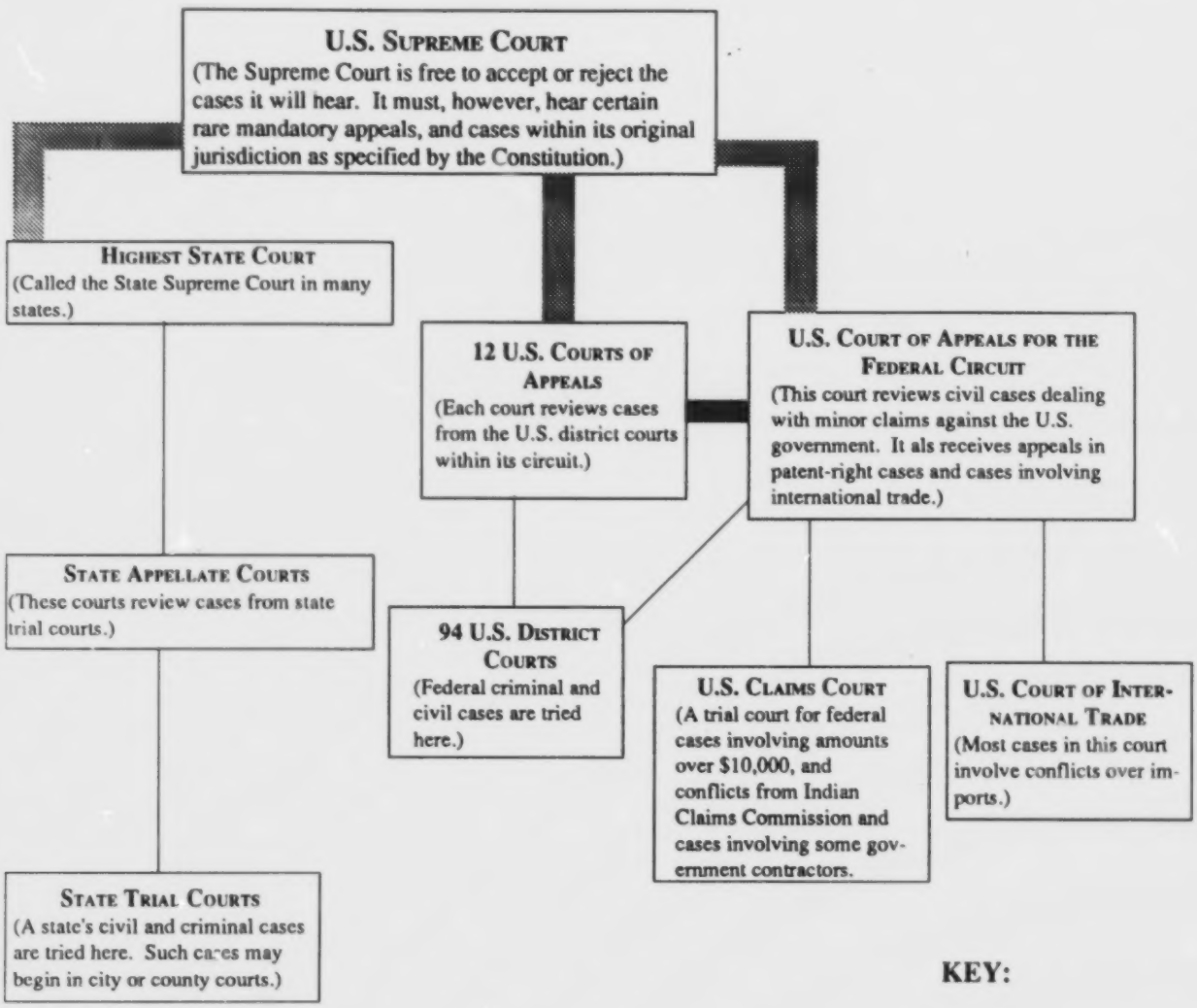
The U.S. Supreme Court cont.

The chief justice begins the discussion by giving the history of the case and presenting the legal question before the Court. Beginning with the most senior justice down to the most junior justice, the justices report. There is no time limitation, the order is never altered, and the speaker is never interrupted. When all justices have been heard, there is a more informal and sometimes heated discussion. Once the chief justice decides that there is nothing more to be said, there is a vote, with the most junior justice voting first. The chief justice votes last, exercising a swing vote that can be very important, especially in five to four decisions.

The chief justice can write the opinion for the case or assign it to another justice who agrees with the majority position. Justices can sign an opinion, agreeing with it as written, write a concurring opinion which agrees with the majority's result but not with the reasoning, or write a dissenting opinion, which disagrees with the result.

The opinions are shared with the public in open court, where they are sometimes read word for word. The reading of the opinions can take from fifteen minutes to several hours depending upon the length, the number of concurring and dissenting opinions, or the importance of the case. The opinions are published in legal publications where they guide future court decisions and arguments made by lawyers.

HOW CASES TRAVEL THROUGH AMERICA'S JUDICIAL SYSTEM


U.S. Supreme Court
(The Supreme Court is free to accept or reject the cases it will hear. It must, however, hear certain rare mandatory appeals, and cases within its original jurisdiction as specified by the Constitution.)
Highest State Court
(Called the State Supreme Court in many states.)
12 U.S. Courts of Appeals
(Each court reviews cases from the U.S. district courts within its circuit.)
U.S. Court of Appeals for the Federal Circuit
(This court reviews civil cases dealing with minor claims against the U.S. government. It als receives appeals in patent-right cases and cases involving international trade.)
State Appellate Courts
(These courts review cases from state trial courts.)
94 U.S. District Courts
(Federal criminal and civil cases are tried here.)
U.S. Claims Court
(A trial court for federal cases involving amounts over $10,000, and conflicts from Indian Claims Commission and cases involving some government contractors.
U.S. Court of International Trade
(Most cases in this court involve conflicts over imports.)
State Trial Courts
(A state's civil and criminal cases are tried here. Such cases may begin in city or county courts.)

KEY:

Together, these make up the 13 U.S. Courts of Appeals.

Appeals must be heard, according to federal law

Cases that reach the U.S. Supreme Court only if four justice agree to review them ("writ of certiorari").

Taken from: "I'll See You In Court:
A Consumer Guide to the Minnesota Court System
Court Information Office, MN Supreme Court

Teaching about the Supreme Court

A person desiring to learn more about the Supreme Court would probably either study the decisions the court hands down, identifying the issues and the holdings, or study the procedure used by the court to arrive at its decisions. One could also study the personalities of the individual judges and the effect that these personalities have on the substance of the decisions and on the court procedures followed, and in this way speculate about court trends, but this is a more difficult and time consuming endeavor.

The lessons contained in this book focus on the first two methods. First, each lesson contains a case summary, in addition to another activity, that will easily lend itself to a case study. Instructions for teaching with the case study method and student handouts are included in this introductory section.

Second, to explore the procedures used by the court, a moot court simulation is also included. This activity will teach students about Supreme Court oral arguments. It will also require that the students fully consider the issues before the court and the arguments (including legal precedents) surrounding the issues. In this way, student will learn not only procedure but also the substance of the law. Moot courts are highly participatory and are generally very popular with students. Each case presented in these materials can be taught using a moot court. However one lesson, *Minnesota* v. *Murphy*, is designed specifically for this activity.

Case Study Activity

The case study method is an integral law-related education tool. An inquiry-oriented teaching technique, it is designed to help students understand and apply legal theory. The students are required to analyze problem situations, understand actions taken by the courts, and determine the impact of the actions. Case studies can take many forms including legal cases based on written opinions by the courts; hypothetical situations involving some conflict or dilemma; and real life situations drawn from newspapers, magazines, books, or other sources.

Learner Outcomes:
Students will:

1. Become familiar with court procedure.
2. Identify legal issues.
3. Understand and evaluate decisions made by the courts.
4. Explore their own ideas and develop solutions to the problems.

Materials needed: *Copies of* **Student Handout: CASE STUDY**

Time needed: 1 class period

Grade level: Grades 7-12

Procedure:

1. Ask students to read the **CASE SUMMARY.**

2. Discuss introductory information about the case. Who are the parties? What are the basic facts?

3. Help students frame the issues. Although cases before the Supreme Court have as their basis a legal question that must be answered in the decision, other issues might exist. These might include public policy issues, ethical issues, and practical issues. Students should frame the issues in the form of questions.

4. Have students study the case by completing the **Student Handout: CASE STUDY.**

5. Review the answers to the questions. Ask students how they would have decided the case and why.

Procedure cont.

6. There are variations to this activity. Students can be given an entire Supreme Court opinion, which is much more difficult but also more enlightening. (Citations for the opinions included in this publication are provided to aid in the location of the entire opinions.) Also, students might be given only the facts and asked to decide the case. The students are later given the court's decision which they can compare with their own decision.

Student Handout: CASE STUDY

Case Name: _____

Who originated the suit? _____

What court gave the ruling? _____

What was the date of the decision? _____

What were the facts of the case? (Who did what to whom, where, when, under what circumstance?)

_____

_____

_____

What was the question before the court? (Issue) _____

_____

_____

What were the legal arguments on each side? _____

_____

_____

What were the legal grounds for the appeal? _____

_____

What was the decision of the court? _____

What reasons supporting the decision were provided? _____

_____

_____

Did every justice agree? Who agreed? Who disagreed? _____

_____

_____

Student Handout: CASE STUDY ACTIVITY cont.

If a dissent opinion was issued, what did it say?_____

What was the legal significance of the case? (What legal standard was established? Settled? Developed?)

What was the significance of the decision for the parties to the case?

Moot court simulation

Moot court simulations conducted within one or two class periods help students learn about appellate procedure as well as provide a deeper look at constitutional issues argued on appeal. The format is adaptable to any trial court decision subject to appeal or as a reenactment of Supreme Court Decisions. Students can research prior case law as precedent for the issue before the court or simply apply their understanding of the law to the case. However the simulation is used, students will have the opportunity to prepare and present arguments that support their side of the case before judges on an appellate court.

Learner Outcomes

Students will:

1. Know the role of an appellate court in our judicial system.
2. Understand appellate court procedure and decorum.
3. Analyze issues of constitutional law.

Materials needed: *Copies of* **Student Handout: CASE STUDY FOR MOOT COURT ACTIVITY**
INSTRUCTIONS FOR ATTORNEY TEAMS
INSTRUCTIONS FOR JUSTICES
INSTRUCTIONS FOR LAW CLERKS

Time needed: 2 class periods

Grade level: Grades 9-12

Procedure:

1. Begin the class session by asking, "Who decides if a trial has been fair?" "Who has the last word in deciding what the Constitution means?" "What is meant by a court of last resort?" "What is a 'higher' court?"

2. Explain background on appellate procedure:

A case begins in a trial or district court. It is here where witnesses testify, lawyers ask questions, and judges or juries make decisions. A trial court is said to have ***original jurisdiction*** because it hears a case for the first time.

Procedure cont.

If a person who loses a case in a trial court wishes to appeal a decision, he or she would take the case to a court with appellate jurisdiction. In the federal court system, the U.S. Court of Appeals is the first court of appellate jurisdiction. After that a case would go to the U.S. Supreme Court which has the final say.

There are no jury trials in appellate courts. Rather, they are ***courts of review*** which determine whether or not the rulings and judgment of the lower court are correct. The party who brings the suit to the reviewing court is referred to as the ***petitioner*** or ***appellant***. The petitioner argues that the lower court erred in its judgment and seeks a ***reversal*** of the lower court's decision. The party who won at the lower court must now argue against the setting aside of the judgment. This party, the ***respondent*** or ***appellee***, wants the appellate court to ***affirm*** or agree with the lower court's decision.

The first step in the appellate process, after the filing of a ***Notice of Appeal,*** is the submission of ***briefs*** by each party. Each brief identifies the facts of the case, the issues of fact and law, how the trial court ruled, and legal arguments using case law that will persuade the appellate court to affirm or reverse the lower court.

After the briefs are completed, ***oral arguments*** might be scheduled to answer questions the judges might have. Unlike trial court procedure where many witnesses testify in court, oral arguments are only presented by attorneys. Each lawyer is given a limited amount of time (usually 30 minutes) to present their argument before a panel of judges. The petitioner argues first because their client has brought the appeal to the higher court. Respondent's argument will immediately follow. Before petitioner begins, he or she may reserve time for a rebuttal following the respondent's argument. Judges frequently interrupt the attorneys to ask clarifying questions.

Following the oral argument, judges meet together and discuss the merits of the case. Judges will vote, and the majority viewpoint becomes the judgment. A judge for the majority will write the ***majority opinion.*** Those judges who disagree with the majority may write a ***minority*** or ***dissenting opinion.***

3. Select a case for the moot court. Review the background and facts of the case. Identify which parties are the petitioner and respondent. Determine each side's position before the appellate court. Clarify the issues in the case by listing arguments for each side.

4. Divide the class into attorney teams of four to six students and assign to each team the position of petitioner or respondent. They will prepare arguments to support their positions and present these to a court of nine justices. Each side is allowed four minutes for its presentation. **(See INSTRUCTIONS FOR ATTORNEYS)**

An uneven number of justices should be selected including a chief justice. (The Minnesota Supreme Court has seven justices and the U.S. Supreme Court has nine.) They will listen to the attorney arguments and interrupt to ask questions. After oral arguments, the chief justice will lead a five-minute conference in which justices present their views of the case. Each justice will try to persuade the others to agree with his or her interpretation of the case. At the end of the conference, the justices take a final vote. The chief justice may assign a justice to present the decision of the court to the class. **(See INSTRUCTIONS FOR JUSTICES)**

Procedure cont.

5. Remaining students might act as law clerks in helping justices understand the case. (In Minnesota, judges on the Court of Appeals and the Supreme Court each have two law clerks that help research the law and develop the opinions. Law clerks are lawyers who are recent law school graduates.) Assign each clerk to a particular justice. They will meet together during preparation time and discuss the case. **(See INSTRUCTIONS FOR LAW CLERKS)**

As an alternative, select second attorney teams to present additional arguments.

6. Depending on the purpose of the activity, preparation time will vary. A complex case requiring additional research may be an outside assignment. A simpler "self-contained" case need only take fifteen minutes of preparation time as students work together.

7. Conduct the Moot Court Activity.

A. ***Room Set-Up.*** Justices should be seated together in a row facing the class. Attorneys can present their arguments by standing in front of the court or seated as a group.

B. ***Oral Argument.*** (15 minutes)

Have one student announce that court is in session and have students rise as the justices enter the room. The chief justice will open court by announcing the name of the case. He or she will then ask the petitioner's attorneys to begin their four-minute argument. At any time, the justices may ask questions. Attorney teams should answer questions before continuing the argument. Respondent's attorney will follow. (You may adapt format by allowing a rebuttal by petitioner. This offers student attorneys a second chance to make their argument after they become comfortable with the format.) After oral arguments, the chief justice adjourns the court.

C. ***Follow-Up Conference*** (5 minutes)

Justice conferences are done in private. However, for this activity a **"fishbowl conference"** will allow the class to observe the discussion. Justices sit in a circle in the middle of the room with the rest of the class forming an outer circle where they can easily hear and see the discussion.

The chief justice will ask each justice for his or her view of the case. He or she will then facilitate an open discussion before calling for a final vote.

8. Debrief the Moot Court activity. Encourage all students to participate in the discussion. Questions that facilitate discussion include:

A. Do you agree or disagree with the decision of the court? Compare the class's decision with the actual case.

B. What attorney arguments were most convincing to you? Why?

C. Were the questions asked by the justices helpful to the process?

D. What do justices consider in deciding how to vote on a case?

E. Did you change your mind about the case after listening to the attorney arguments? Judge's conference?

F. Why are appellate courts important to our judicial system?

INSTRUCTIONS FOR ATTORNEY TEAMS

Organize your argument in outline form including the following information:

1. A clear, brief statement of your position and at least two arguments or reasons why the court should adopt your position.

If you represent the petitioner your position is that the lower court made a wrong decision. Why? Your argument may focus on whether or not a law is constitutional, trial procedure was fair, or actions by government officials were proper.

If you are representing the respondent your position is that the lower court made the right decision. Why? Defend the lower court's position as well as counter the charges made by the other side.

2. Facts from the case that support each argument with an explanation of how each fact supports it.

3. Explanations of any Supreme Court decisions that support your arguments.

Sample Outline

1. Petitioner's Case
   - A. Introduction and statement of position
   - B. Supreme Court decisions that support argument
   - C. Request for action (uphold trial court or reverse trial court)

Use this outline in your four-minute presentation. Decide which team member(s) will present the information.

Finally, assign at least one team member to answer the justices' questions. He or she should prepare by carefully reviewing the case description.

Oral Argument:

Begin your argument by saying:

"May it please the court, my name is _____ *and I represent* _____ *in this case."*

Then continue with your argument. Be prepared to stop when a justice asks a question. The attorney team member assigned to questions should answer. Continue presenting your case until the next question is asked. Try to conclude your argument by restating the action you would like the court to take. Remember that your time may be taken up with answering questions.

INSTRUCTIONS FOR JUSTICES

To prepare for oral arguments, justices should meet with their assigned clerk and review the case. What is unclear to you? What facts do you want clarified? Does a position need more explanation? Together develop questions to be asked by justices during oral arguments. Remember justices can interrupt attorney presentations to ask questions.

Justices and clerks can also review previous court decisions that relate to the issue presented in the case. The court tries to follow previous decisions in order to promote consistency and stability in the legal system. Should the court follow its earlier decisions ***(precedent)*** or should the court abandon precedent and create new rules? As a justice, you must decide this case.

ROLE OF CHIEF JUSTICE

During the Moot Court Activity you may:

1. Extend the time limits of the attorneys' presentations if you or another judge feel it is necessary.

2. Maintain order in the courtroom by insisting that only one individual speak at any one time and that all statements by the attorneys be directed to the court and not to the attorneys representing the other side in the case.

At the follow-up conference:

3. Insist that each judge be initially allowed to express his or her views regarding the case without any comments of questions from the other judges.

4. Provide the judges with the opportunity to question the positions of the other judges and convince them of the merits of their own views.

5. Take a formal poll of the judges and assign one judge to be in charge of presenting the court's majority opinion. If a dissenting or minority opinion exists, provide dissenting judges an opportunity to present their opinion.

INSTRUCTIONS FOR LAW CLERKS

Law clerks are responsible for such tasks as reading all the appeals filed with the court, writing memos summarizing the key issues in each case, and helping prepare court opinions by doing research and writing drafts.

In this activity, law clerks should read carefully all documents about the case and any relevant Supreme Court decisions. You will discuss the case with your assigned justice and help him or her prepare questions to be asked during oral arguments.

Near v. *Minnesota*

Learner Outcomes

Students will:

1. Understand the historical basis of a free press and the protections provided by the First Amendment.
2. Learn about acceptable limitations on free press.
3. Consider the dangers of a free press.
4. Learn about free press today.

Materials Needed: *Copies of*
CASE SUMMARY: *Near* v. *Minnesota*
Student Handout: *NEAR* v. *MINNESOTA*
Student Handout: FACTS NOT THEORIES
Tabloids
Daily newspapers

Time needed: 2-3 class periods

Grade level: Grades 9-12

Procedure:

1. Introduce the concept of free press by asking students what they think it means. Discuss the differences between metropolitan daily newspapers (*Minneapolis Star Tribune*, *St. Paul Pioneer Press*) and tabloids (*National Inquirer*). Should they be treated the same? If possible, share copies of both publications with the students.

2. Explain that free press was simply an ideal when it was considered by the country's founders and that the U.S. Supreme Court has shaped its meaning through many court decisions. One of the Court's most significant decisions is *Near* v. *Minnesota*.

3. Have students read the **CASE SUMMARY. *Near* v. *Minnesota*.**. Individually or as a group, study the case using the case study method (included in introductory materials).

4. Explain to students that they will be further exploring the opinion of the court (the majority opinion) and the dissenting opinion, as well as looking at viewpoints of the country's founders.

Procedure cont.

5. Divide the class into seven small groups. Assign each group one of the problems (quotations and questions for consideration). Provide each student with a copy of the assigned problem. Ask each group to discuss the questions provided with the quotation.

6. Shift the groups so that each new group has one representative from each problem. Each representative is to share the information discussed in step five with the new group.

7. As a large group, discuss the meaning and development of freedom of the press. Ask them if they would have voted with the *Near* majority or the dissent.

8. If students need to have their commitments to a free press challenged in a provocative way, share the news article that appeared in the last issue of the *Saturday Press* that was published before it was stopped under the Public Nuisance Law. **Student Handout: FACTS NOT THEORIES.** Would they change their minds? Should such articles be limited? What is the danger of limitation?

9. Inviting a newspaper publisher or reporter to the classroom to address these issues and talk about current practices would provide students with an opportunity to consider the meaning of the First Amendment in a very personal way.

CASE SUMMARY: *Near* v. *Minnesota*

283 U.S.696 (1930)

In the 1920s, Minnesota was the site of lumber and iron ore exploitation, gambling, prostitution, and gangsters. Minneapolis was described by Lincoln Steffens in The Shame of the Cities as a classic example of a town "where the people were sober, satisfied, busy with their own affairs, and left the law enforcement and the running of the city to the corrupt politicians and strong-armed gangsters."

Nate Bomberg, a veteran reporter for the St Paul *Pioneer Press* wrote "Everybody was in on the take. You can't have an underworld without an overworld, if you know what I mean. You can't have rackets unless you have the mayor, the chief of police, and the county attorney in your corner."

During those years, Jay M. Near was the publisher of the *Saturday Press*, a sleazy Minneapolis newspaper that contained bigoted, scandalous stories filled with rumors, feeding the city a diet of gossip. However, Mr. Near was also a crusader against corruption in government. His newspaper attacked the mayor and the chief of police, claiming that city hall was in on the take. The political corruption in Minneapolis and St. Paul and the truce between the criminals and the police and the city fathers provided endless material for Near.

The *Saturday Press* had a short, but colorful four-month life. Near's attacks offended many people in power, and each issue of the newspaper became more intense. Eventually the attacks did not end with political corruption but blamed all of Minneapolis's problems on the Jews.

In November 1927, a complaint was filed in Hennepin District Court, alleging that the *Saturday Press* had violated the Public Nuisance Law, which had been pushed through the Minnesota Legislature in 1925 to silence similar newspapers, published in Duluth and on the Iron Range, attacking northern Minnesota elected officials.

The Public Nuisance Law said "Section 1. Any person who . . . shall be engaged in the business of regularly or customarily producing, publishing or circulating, having in possession, selling or giving away (a)an obscene, lewd and lascivious newspaper, magazine, or other periodical, or (b)a malicious, scandalous and defamatory newspaper, magazine or other periodical, is guilty of a nuisance, and all persons guilty of such nuisance may be enjoined, as hereinafter provided. . . .In actions brought under (b) above, there shall be available the defense that the truth was published with good motives and for justifiable ends. . . ."

The Public Nuisance Law did not punish Near for having published statements that defamed public officials (that could have been accomplished under laws of libel and

CASE SUMMARY: *Near* v. *Minnesota* cont.

defamation). Rather, Near was forced under the law to stop future publications. The government tried to **"enjoin"** or stop his newspaper business.

Although Near was forced to stop publishing new newspapers, he did not give up his cause. He challenged the Minnesota law as being an unconstitutional **prior restraint** and, with the help of Chicago *Tribune* publisher Bertie McCormick (who joined because he feared the development of similar restraints on more respectable newspapers), took the question of freedom of the press to the Minnesota Supreme Court and the U.S. Supreme Court.

On June 1, 1931, the U.S. Supreme Court, in a five-to-four decision, said that it agreed with Near, stating:

"The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right. Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain the publication of newspapers and periodicals. The general principle that the constitutional guaranty of the liberty of the press gives immunity from previous restraints has been approved in many decisions under the provision of state constitutions. . . .For these reasons we hold the statute. . .to be an infringement of the liberty of the press guaranteed by the Fourteenth Amendment."

In October 1932, under the caption "The Newspaper That Refused to Stay Gagged," the *Saturday Press* reappeared, with Jay Near at its helm. The character of the paper hadn't changed much. Mr Near died on April 17, 1936 of natural causes. Although the Minneapolis *Tribune* ran only a brief obituary, making no reference to the landmark First Amendment case, the Chicago *Tribune* ran a story under the headline "Editor J. Near Dies in Minnesota; Foe of Governor Olson and Crime."

BACKGROUND Source: *Minnesota Rag*, Fred Friendly

Student Handout: *NEAR* v. *MINNESOTA*

PROBLEM 1

When people talk of the Freedom of Writing, Speaking or Thinking I cannot choose but laugh. No such thing ever existed. No such thing now exists: but I hope it will exist. But it must be hundreds of years after you and I shall write and speak no more.

John Adams to Thomas Jefferson, July 15, 1817

?? Questions to consider ??

1. Where are the protections of freedom of writing (press) and speaking listed?

2. Why did the country's founders think that these freedoms were important?

3. How have the freedoms of press and speech been expanded since 1791?

Student Handout: *NEAR* v. *MINNESOTA* cont.

PROBLEM 2

Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the states, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigor of those yielding the proper fruits.

James Madison

?? Questions to consider ??

1. What is Mr. Madison referring to when he says "noxious branches" and "those yielding the proper fruits."

2. It is sometimes said that punishing abuses of the press will have a "chilling effect" on the appropriate action of the press. How might this happen? Do you agree or disagree?

Student Handout: *NEAR* v. *MINNESOTA* cont.

Problem 3

The administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities.

Chief Justice Charles Evans Hughes, Opinion of the Court
Near v. *Minnesota*

?? Questions to consider ??

1. What role does the press play, especially in the situations described above?

2. Has society changed since 1931 when Justice Hughes wrote this statement? Has the function of the media changed? If so, in what ways?

Student Handout: *NEAR* v. *MINNESOTA* cont.

Problem 4

The protection even as to previous restraint is not absolutely unlimited. . . . "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional rights" . . . . No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government.

Chief Justice Charles Evans Hughes, Opinion of the Court
Near v. *Minnesota*

?? Questions to consider ??

1. What three areas can be regulated, according to the above statement?

2. What problems do these areas create?

3. Can you think of recent situations concerning these limitations?

Student Handout: *NEAR* v. *MINNESOTA* cont.

PROBLEM 5

If we cut through mere details of procedure, the operation and effect of the statute in substance is that public authorities may bring the owner or publisher of a newspaper or periodical before a judge upon a charge of conducting a business of publishing scandalous and defamatory matter-in particular that the matter consists of charges against public officers of official dereliction-and unless the owner or publisher is able and disposed to bring competent evidence to satisfy the judge that the charges are true and are published with good motives and for justifiable ends, his newspaper or periodical is suppressed and further publication is made punishable as a contempt. This is the essence of censorship.

Chief Justice Charles Evans Hughes, Opinion of the Court
Near v. *Minnesota*

?? Questions to consider ??

1. How would a newspaper try to prove that its charges are true and are published with good motives and for justifiable ends? What would constitute justifiable ends?

2. Who would decide if the materials was true and published with good motives and for justifiable ends?

3. Is there a potential conflict of interest when a public official (a judge) is deciding about the motives and justifiable ends of a newspaper's criticism of another public official?

Student Handout: *NEAR* v. *MINNESOTA* cont.

PROBLEM 6

It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.

Justice Felix Frankfurter
United States v. *Rabinowitz* (1950)

?? Questions to consider ??

1. Can you think of examples?

2. Should these people receive fewer safeguards?

Student Handout: *NEAR* v. *MINNESOTA* cont.

Problem 7

That this amendment [First Amendment] was intended to secure to every citizen an absolute right to speak, or write, or print whatever he might please, without any responsibility, public or private, therefore, is a supposition too wild to be indulged by any rational man. This would be to allow to every citizen a right to destroy at his pleasure the reputation, the peace, the property, and even the personal safety of every other citizen. . . . Civil society could not go on under such circumstances. Men would then be obliged to resort to private vengeance to make up for the deficiencies of the law; and assassinations and savage cruelties would be perpetrated with all the frequency belonging to barbarous and brutal communities. It is plain, then, that the language of this amendment imports no more than that every man shall have a right to speak, write, and print his opinions upon any subject whatsoever, without any prior restraint, so always that he does not injure any other person in his rights, person, property, or reputation; and so always that he does not thereby disturb the public peace, or attempt to subvert the government. . . .

Justice Pierce Butler, Dissenting Opinion, quoting Justice Story
Near v. *Minnesota*

?? Questions to consider ??

1. If freedom of speech and press are absolute, what does Justice Butler and Justice Story claim will happen?

2. Does the statement that limits free speech and press so that it does not attempt to subvert the government contradict the reason for free speech and press? Should a person be able to call for the overthrow of the government?

ANSWER KEY : *Near* v. *Minnesota*

?? Questions to consider ??

Problem 1

1. Where are the protections of freedom of writing (press) and speaking listed?

Answer: State declarations of rights, U.S. Bill of Rights.

2. Why did the country's founders think that these freedoms were important?

Answer: They believed that any government would attempt to abuse its powers and that one of the only ways in which to hold government officials accountable to the people was for the people to feel that they could discuss the issues freely.

3. How have the freedoms of press and speech been expanded since 1791?

Answer: Free press now includes other methods of communication including television and radio (although treated a bit differently). Free speech includes symbolic speech (expression). Within these areas, the U.S. Supreme Court has handed down many decisions that clarify First Amendment freedoms. (For example, in *Time* v. *Sullivan*, the Supreme Court held that public officials attempting to prove libel must show that the publishers acted with malice or with reckless disregard for the truth. Also, in *Tinker* v. *Des Moines*, the court decided that wearing a black armband to school to protest the Vietnam war was protected under symbolic speech.)

Problem 2

1. What is Mr. Madison referring to when he says "noxious branches" and "those yielding the proper fruits."

Answer: "Noxious branches" is referring to newspapers that publish stories that one would view as harmful to society. "Those yielding the proper fruits" refers to newspapers that print appropriate stories.

2. It is sometimes said that punishing abuses of the press will have a "chilling effect" on the appropriate action of the press. How might this happen? Do you agree or disagree?

Answer: If newspaper publishers are afraid of the consequences of publishing a story that is critical of government, they may choose instead to refrain from discussing issues that are of controversy and importance to the public.

ANSWER KEY: *Near* v. *Minnesota* cont.

PROBLEM 3

1. What role does the press play, especially in the situations described above?

ANSWER: The media is viewed as the watchdog on the operations of government. Some call it the fourth branch of government, referring to its role of checking on the other three branches of government to make certain that government officials are doing their jobs according to the law.

2. Has society changed since 1931 when Justice Hughes wrote this statement? Has the function of the media changed? If so, in what ways?

ANSWER: Although we may view today's society as lawless, Minnesota in the 1920s was filled with corruption. However, many of the problems facing Minnesotans in the 1920s continue to plague us today. Crime has increased and government is even more complex. The news media continues to take its role seriously, often times forming its own investigative units to look into questionable behavior.

PROBLEM 4

1. What three areas can be regulated, according to the above statement?

ANSWER: National secrets during times of war, obscenity, and "fighting words."

2. What problems do these areas create?

ANSWER: It is hard to determine what secrets deserve protection versus the information that the public has a right to know, hard to define obscenity, and hard to select the words that are "fighting words."

3. Can you think of recent situations concerning these limitations?

ANSWER: The press coverage of the Persian Gulf War was both criticized for publicizing government war efforts and criticized for not providing enough information about the actual damage being done in Iraq. Recent songs have been labeled "obscene," and record sellers have been charged with crimes (Two Live Crew). Also, organizations are attempting to regulate hate language calling it "fighting words."

ANSWER KEY: *Near* v. *Minnesota* cont.

Problem 5

1. How would a newspaper try to prove that its charges are true and are published with good motives and for justifiable ends? What would constitute justifiable ends?

Answer: Proving the truth would not be as difficult as proving good motives and justifiable ends. It is very likely that what one would consider to be justifiable ends would not be so to another.

2. Who would decide if the materials was true and published with good motives and for justifiable ends?

Answer: The judge, a servant of the government.

3. Is there a potential conflict of interest when a public official (a judge) is deciding about the motives and justifiable ends of a newspaper's criticism of another public official?

Answer: Yes. If the judge simply does not like the content of the article (because it reflects badly on colleagues, friends, etc.), he or she could find that good motives and justifiable ends were lacking.

Problem 6

1. Can you think of examples?

Answer: Pornographers frequently challenge obscenity laws. Persons accused of crimes (often felons convicted of previous offenses) challenge illegal searches by police officers.

2. Should these people receive fewer safeguards?

Answer: No, the principle of innocent until proven guilty requires that everyone receive all protections regardless of past criminal conduct.

ANSWER KEY: *Near* v. *Minnesota* cont.

Problem 7

1. If freedom of speech and press are absolute, what does Justice Butler and Justice Story claim will happen?

Answer: Citizens will be injured in a way that will incite them to violence. If their government does not have the power to limits these rights, the citizens will be forced to take action themselves through assassinations and savage cruelties.

2. Does the statement that limits free speech and press so that it does not attempt to subvert the government contradict the reason for free speech and press? Should a person be able to call for the overthrow of the government?

Answer: In the Declaration of Independence, Thomas Jefferson stated that when government has a long pattern of abuse of our unalienable rights of life, liberty, and pursuit of happiness, the citizens have the right, even the duty to "throw off such government," to abolish it and institute a new government.

However, if advocating overthrow is done in a context where the communication of ideas threatens to trigger serious damage through imminent lawless action, the communication can be regulated to protect the public.

Student Handout: FACTS NOT THEORIES

The following articles appear in the last edition published, dated November 19, 1927:

"FACTS NOT THEORIES.

" `I am a bosom friend of Mr. Olson,' snorted a gentleman of Yiddish blood, `and I want to protest against your article,' and blah, blah, ad infinitum, ad nauseam.

"I am not taking orders from men of Barnett faith, at least right now. There have been too many men in this city and especially those in official life, who HAVE been taking orders and suggestions from JEW GANGSTERS, therefore we HAVE Jew Gangsters, practically ruling Minneapolis.

"It was buzzards of the Barnett stripe who shot down my buddy. It was Barnett gunmen who staged the assault on Samuel Shapiro. It is Jew thugs who have `pulled practically every robbery in this city. It was a member of the Barnett gang who shot down George Rubenstein (Ruby) while he stood in the shelter of Mose Barnett's hamcavern on Hennepin avenue. It was Mose Barnett himself who shot down Roy Rogers on Hennepin avenue. It was at Mose Barnett's place of `business' that the `13 dollar Jew' found a refuge while the police of New York were combing the country for him. It was gang of Jew gunmen who boasted that for five hundred dollars they would kill any man in the city. It was Mose Barnett, a Jew, who boasted that he held the chief of police of Minneapolis in his hand-had bought and paid for him.

"It is Jewish men and women-pliant tools of the Jew gangster, Mose Barnett, who stand charged with having falsified the election records and returns in the Third ward. And it is Mose Barnett himself, who, indicted for his part in the Shapiro assault, is a fugitive from justice today.

"Practically every vendor of vile hooch, every owner of a moonshine still, every snake-faced gangster and embryonic yegg in the Twin Cities is s JEW.

"Having these examples before me, I feel that I am justified in my refusal to take orders from a Jew who boasts that he is a `bosom friend ' of Mr. Olson.

"I find in the mail at least twice per week, letters from gentlemen of Jewish faith who advise me against `launching an attack on the Jewish people.' These gentlemen have the cart before the horse. I am launching, nor is Mr. Guilford, no attack against any race, BUT:

"When I find men of a certain race banding themselves together for the purpose of preying upon Gentile or Jew; gunmen, KILLERS, roaming our streets shooting down men against whom they have no personal grudge (or happen to have); defying OUR laws;

Student Handout: FACTS NOT THEORIES cont.

corrupting OUR officials; assaulting business men; beating up unarmed citizens; spreading a reign of terror through every walk of life, then I say to you in all sincerity, that I refuse to back up a single step from that `issue'-if they choose to make it so.

"If the people of Jewish faith in Minneapolis wish to avoid criticism of these vermin whom I rightfully call `Jews' they can easily do so BY THEMSELVES CLEANING HOUSE.

"I'm not out to cleanse Israel of the filth that clings to Israel's skirts. I'm out to `hew to the line, let the chips fly where they may.'

"I simply state a fact when I say that ninety per cent. of the crimes committed against society in this city are committed by Jew gangsters.

"It was a Jew who employed JEWS to shoot down Mr. Guilford. It was a Jew who employed a Jew to intimidate Mr. Shapiro and a Jew who employed JEWS to assault that gentleman when he refused to yield to their threats. It was a JEW who wheedled or employed Jews to manipulate the election records and returns in the Third ward in flagrant violation of law. It was a Jew who left two hundred dollars with another Jew to pay to our chief of police just before the last municipal election, and:

"It is Jew, Jew, Jew, as long as one cares to comb over the records.

"I am launching no attack against the Jewish people AS A RACE. I am merely calling attention to a FACT. And if the people of that race and faith wish to rid themselves of the odium and stigma THE RODENTS OF THEIR OWN RACE HAVE BROUGHT UPON THEM, they need only to step to the front and help the decent citizens of Minneapolis rid the city of these criminal Jews.

"Either Mr. Guilford or myself stand ready to do battle for a MAN, regardless of his race, color or creed, but neither of us will step one inch out of our chosen path to avoid a fight IF the Jews want to battle.

"Both of us have some mighty loyal friends among the Jewish people but not one of them comes whining to ask that we `lay off' criticism of Jewish gangsters and none of them comes carping to us of their `bosom friendship' for any public official now under our journalistic guns."

Minnesota v. *Hershberger*

Learner Outcomes

Students will:

1. Know the basis for freedom of religion.
2. Compare the protections offered by the Minnesota Constitution with those offered by the U.S. Constitution.
3. Understand that cases reflect real problems facing communities and that lawsuits are only one way of solving the problems.
4. Evaluate rights, responsibilities, actions, and consequences surrounding freedom of religion.

Materials needed: *Copies of* **CASE SUMMARY: *Minnesota* v. *Hershberger***
ANALYSIS CHART

Time needed: 2 class periods

Grade level: Grades 9-12

Procedure:

1. Ask students to define freedom of religion. Can the right to practice one's religion ever be limited? When? When it infringes on another's rights? Jeopardizes the public safety?

2. Have students consider what would happen if religious freedom was absolute, if government could not regulate it in any way? What if one's religion requires human sacrifice?

3. Explain to students that under both the Minnesota Constitution and under the U.S. Constitution, the government has the power to regulate rights, but that it can do so in a very limited way. The frequent attempts by government to regulate the practice of religion or to act in ways that establishes religion and the countering freedom of religion assertions made by individuals results in many freedom of religion cases.

4. Have students read the **CASE SUMMARY: *Minnesota* v. *Hershberger*,** which is a 1990 freedom of religion case that clarified the Minnesota Constitution's freedom of religion protection. Discuss.

5. Explain to students that most cases are more complex than the facts that are considered by the court (court is limited to the legal questions) and that these complex facts include people making decisions to fulfill their responsibilities and/or assert their rights.

Procedure cont.

6. Have students analyze the *Hershberger* case by using the **ANALYSIS GRID.** Working in small groups, they should answer the questions and discuss the conflicting interests that exist in the community. Students may need assistance in stating the problem and identifying the rights and responsibilities asked for in Question 1. At the conclusion of their analysis, have them select the best solution to the problem. (For your assistance, a **KEY** for the grid has been provided.)

7. Compare grids and preferred solutions. Analyze solutions for constitutional problems.

CASE SUMMARY: *Minnesota* v. *Hershberger*

462 N.W.2d 393 (1990)

Amish families from Ohio began to arrive in Fillmore County in southeastern Minnesota in 1973. As a religious community, they live a simple lifestyle, traveling by horse and buggy. Initially, there were few problems with the Minnesota law that requires slow-moving vehicles, including Amish buggies and wagons, to display an orange slow-moving vehicle sign. Younger Amish, conscious of their position as newcomers and anxious to fit into their new community, tended to use the familiar orange triangle. Some Amish preferred a black triangle with a white outline. Older, more conservative Amish, did not use any sign. They believed the bright colors of the sign and the symbol itself would put their faith in "worldly symbols" rather than in God. Instead, they outlined their buggies with reflective tape. If stopped and tagged for violating the law, the Amish drivers usually pleaded not guilty. Routinely, they were found guilty, and they paid the assessed fines.

There were sporadic conflicts over the sign law. Some non-Amish people in the area pointed to public safety concerns and occasional accidents involving slow moving vehicles as reasons why the Amish drivers should display the orange sign. At the same time, the non-Amish community recognized that the Amish community was responsible for a significant increase in tourism in the area. Many feared that enforcing the sign law too rigidly would make the Amish move away. This would result in a financial loss for the entire area.

In 1986, a new Minnesota law was passed that permitted the use of a black triangle with a white outline. The Minnesota Highway Patrol supported the law, feeling strongly that, regardless of color, there must be a sign. Many Amish began to comply. Others continued to refuse to comply and continued to outline their vehicles with reflective tape.

In 1987, the law was changed again to require that the orange triangle always be carried in the slow-moving vehicle and used at night or in conditions of poor visibility. The conflict grew. Many Amish refused to carry the orange triangle. Amish buggy and wagon drivers began to be ticketed, fined, and/or sentenced to community service or jail time for violating the law. Initial fines were in the $20-$22 range, and first jail sentences were often for 7 days. Sentences were often stayed if there were no additional violations within six months. Soon, however, repeat offenders began to appear back in court within the six month period. They refused to pay the fines and were required to serve time in jail.

As repeat offenders began appearing in court, judges were less willing to accept religious freedom as a defense. Until the fall of 1988, the Amish did not hire attorneys to

CASE SUMMARY: *Minnesota* v. *Hershberger* cont.

represent them. Instead, they usually accepted the guilty verdict of the court, but continued to break the law. As Amish men began to be sentenced to community service and jail time for refusal to pay the fines, newspapers and other media began covering the issue.

Articles and reports described how other states had handled the same problem. For example, Ohio and Kentucky allowed the use of reflective tape. Pennsylvania required an orange reflective sign with flashing red lights on the back of the vehicle and flashing orange lights on the front. A Michigan court ruled that the Amish did not have to display the sign, citing the willingness of the Amish to outline with reflective tape. It appeared that Minnesota was the only state actively prosecuting Amish drivers for non-compliance.

In December 1988, Mr Hershberger and thirteen others appeared before a Fillmore County judge for violation of the sign law. They asked the court to dismiss the traffic citations explaining their refusal to display the sign was based on their sincere religious beliefs and that the sign law punished them for their beliefs through fines and jail time. They wanted to practice their religion without interference from the government as guaranteed by the First Amendment. They believed that the law should allow an alternative that would not violate their religion. The alternative suggested was the use of silver reflecting tape.

The opposition said free exercise of religion was not an absolute right. It was also suggested that significant disagreement within the Amish community regarding compliance with the law weakened the Amish's religious grounds argument. The opposition declared that highway safety was the higher concern. It was also pointed out that the Amish did use bright colors such as red for barns and orange for hunting clothes. This was an attempt to discount Amish opposition to the color of the orange sign. Amish opposition to the orange triangular sign was not considered sincere or united enough to warrant freedom from the state law.

A case often cited during the conflict was *Wisconsin* v. *Yoder* (1972), in which the U.S. Supreme Court ruled that Amish parents do not have to formally education their children beyond the 8th grade and that to force them to do so endangers free exercise of religion. The decision was based on the requirement that the government must prove that where laws conflict with religious beliefs, the government has a compelling interest in the goals of the law and that no less restrictive alternative exists.

The Fillmore County district judge refused to dismiss the citations, but did ask the Minnesota Court of Appeals to consider the constitutional questions, which were then forwarded to the Minnesota Supreme Court. The Minnesota Supreme Court found that the law violated the Free Exercise Clause of the U.S. Constitution. As a result, the trial

CASE SUMMARY: *Minnesota* v. *Hershberger* cont.

court's decision to refuse to dismiss the charges was set aside and all charges against the Amish were dismissed.

The State appealed to the U.S. Supreme Court. The U.S. Supreme Court agreed to consider the case. At the same time, the court was considering a free exercise of religion case arising out of religious use of peyote. In this case, *Employment Division, Department of Human Resources of Oregon* v. *Smith* (1990), the Supreme Court significantly changed First Amendment free exercise analysis. The court held that a law of general application, which does not intend to regulate religious belief or conduct, is not invalid because the law incidentally infringes on religious practices. This holding apparently does away with the traditional compelling state interest and least restrictive alternative test for laws burdening the exercise of religion.

The U.S. Supreme Court remanded (sent back) the *Hershberger* case to the Minnesota Supreme Court for reconsideration, applying the new standards decided under *Smith*. In addition to the *Smith* decision interpreting the U.S. Supreme Court, the Minnesota Court also had to consider the protections offered by Article 1, Section 16 of the Minnesota Constitution, which says:

> ***Freedom of conscience; no preference to be given to any religious establishment or mode of worship.*** *The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.*

In comparing the language of the Minnesota Constitution with the language of the First Amendment to the U.S. Constitution which says "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of . . . ," the Court said "This language [the Minnesota Constitution] is of a distinctively stronger

CASE SUMMARY: *Minnesota* v. *Hershberger* cont.

character than the federal counterpart." Accordingly, government actions that may not constitute an outright prohibition on religious practices (thus not violating the First Amendment) could nonetheless infringe on or interfere with those practices, violating the Minnesota Constitution. The state Bill of Rights expressly grants affirmative rights in the area of religious worship while the corresponding federal provision simply attempts to restrain governmental action."

The Minnesota Supreme Court, in interpreting the protections of the Minnesota Constitution, chose to use the standards that had been used by the U.S. Supreme Court prior to *Smith:* that the state must demonstrate **(1)** a compelling state interest in the goal of the law and **(2)** that there is no less restrictive alternative to the action required or prohibited by the law.

"Only the government's interest in peace or safety or against acts of licentiousness will excuse an imposition on religious freedom under the Minnesota Constitution. . . Rather than a blanket denial of a religious exemption whenever public safety is involved, only religious practices found to be inconsistent with public safety are denied an exemption. By juxtaposing individual rights of conscience with the interest of the state in public safety, this provision invites the court to balance competing values in a manner that the compelling state interest test . . .articulates: once a claimant has demonstrated a sincere religious belief intended to be protected by Section 16, the state should be required to demonstrate that public safety cannot be achieved by proposed alternative means."

The Court ruled that the state failed to demonstrate that the alternative signs did not protect public safety, and therefore the application of the Minnesota law to the Amish defendants violated their freedom of conscience rights protected by the Minnesota Constitution.

Adapted from material collected and written by :
Lynn Gresser, Teacher, Jackson Junior High School, Anoka, MN

ANALYSIS CHART

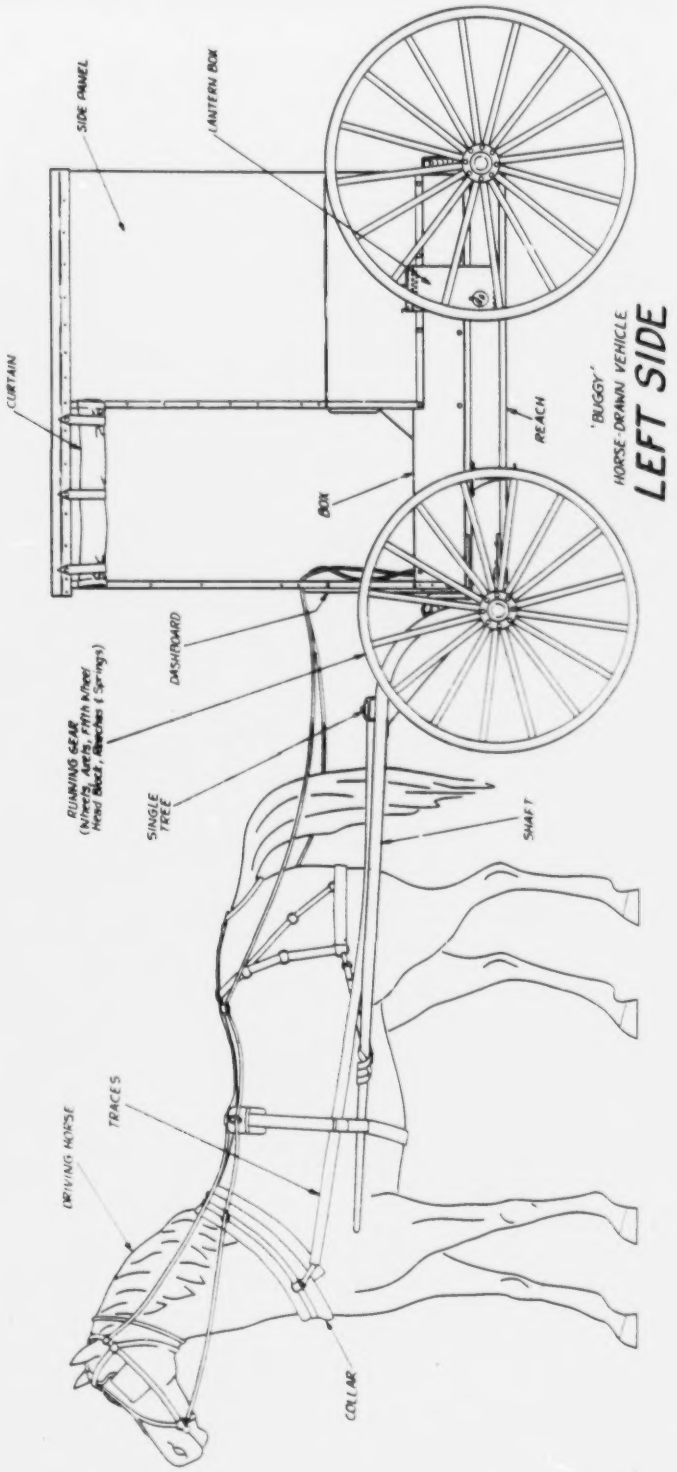
	Minnesota		*Hershberger*	
1. What rights, responsibilities are involved in this case?				
2. What are the sources of these rights, responsibilities?				
3. a. What happens if you ignore these rights, responsibilities?				
b. What happens if you enforce these rights, reponsibilities?				
4. What is the importance of each?				
5. a. What other problems have arisen? b. Who is impacted negatively?				
6. What alternative solutions are there?				
7. What is the best solution?				

Adapted from "intellectual tools" chart, *Responsibility, Level V*, Center for Civic Education/Law in a Free Society, Calabasas, CA.

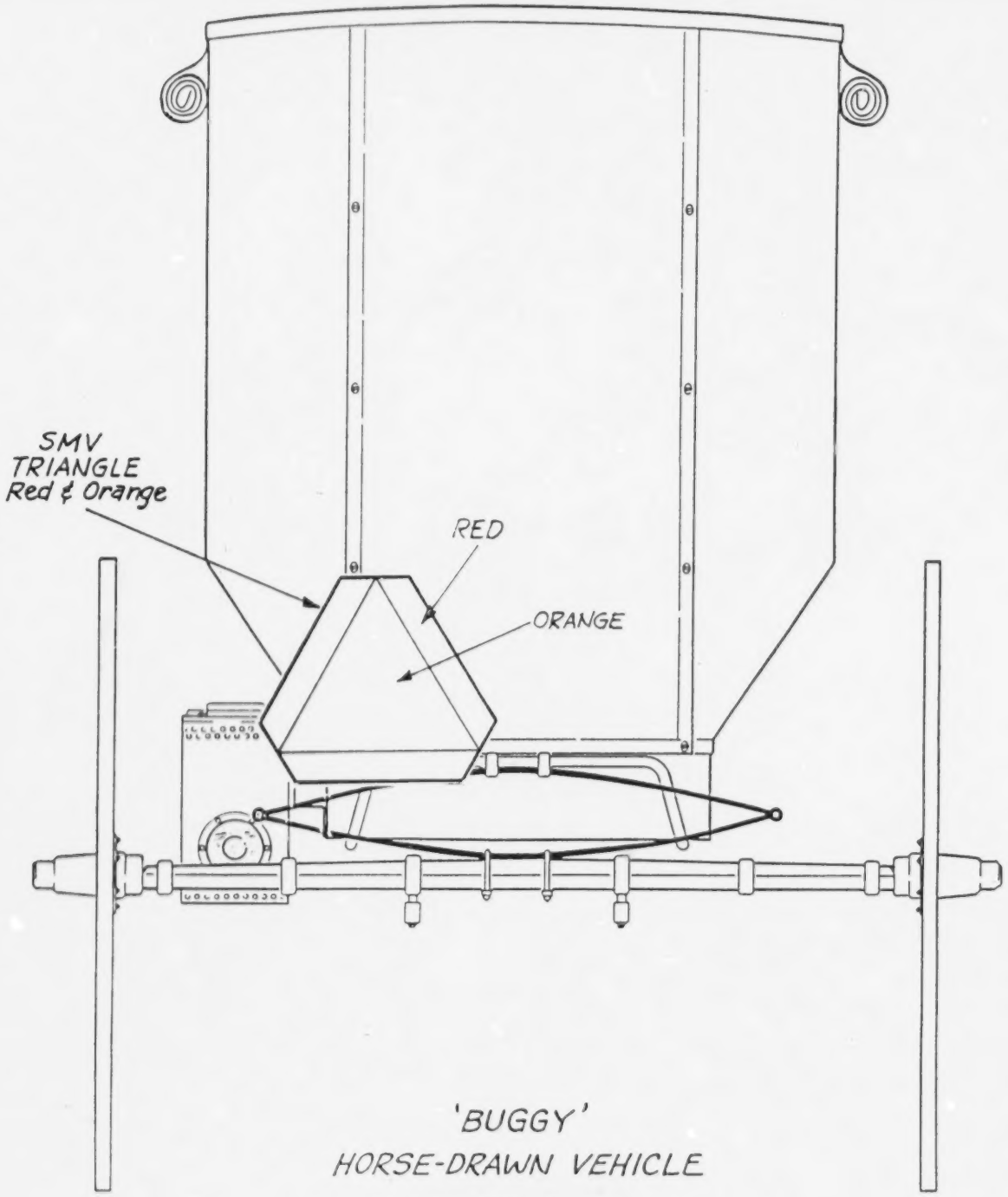
KEY: ANALYSIS CHART

	Minnesota		***Hershberger***	
1. What rights, responsibilities are involved in this case?	Enforcement of slow-moving vehicle sign law	Upholding First Amendment right to religious freedom	Uphold beliefs of Amish Religion	Obey laws of the state
2. What are the sources of these rights, responsibilities?	State law	Constitution, State and Federal	Doctrines of the Amish religion	State law
3. a.What happens if you ignore these rights,responsibilities?	- more accidents - community conflict - loss of job (patrol officer) - chaos	- infringement of First Amendment right - loss of guaranteed protection - inability by some to fully practice their faith	- "punishment" by Amish community - knowledge of failure to uphold belief - conflict within Amish community	- tickets, fines - jail - litigation -publicity - community conflict between Amish and non-Amish - accidents
b. What happens if you enforce these rights, reponsibilities?	- fewer accidents - litigation - infringement of First Amendment right - community conflict - loss of religious freedom	- exceptions - treating people differently - community conflict over exceptions	- respected member of Amish community - self-satisfaction in being true to your faith - accidents - community conflict between Amish and non-Amish - litigation - you must assert your right	- failure to uphold Amish belief - fewer accidents - conflict in Amish community
4. What is the importance of each?	- safety for all - uniformity of signs	- guaranteed right	-the Amish religion is his way of life	- important but religious conviction overrides duty to obey state law
5. a. What other problems have arisen? b. Who is impacted negatively?	- the conflict between the people in the community has potential economic consequences - everyone			
6. What alternative solutions are there?	- reflective tape - stay off state roads			
7. What is the best solution?				

Adapted from "intellectual tools" chart, *Responsibility, Level V*, Center for Civic Education/Law in a Free Society, Calabasas, CA.



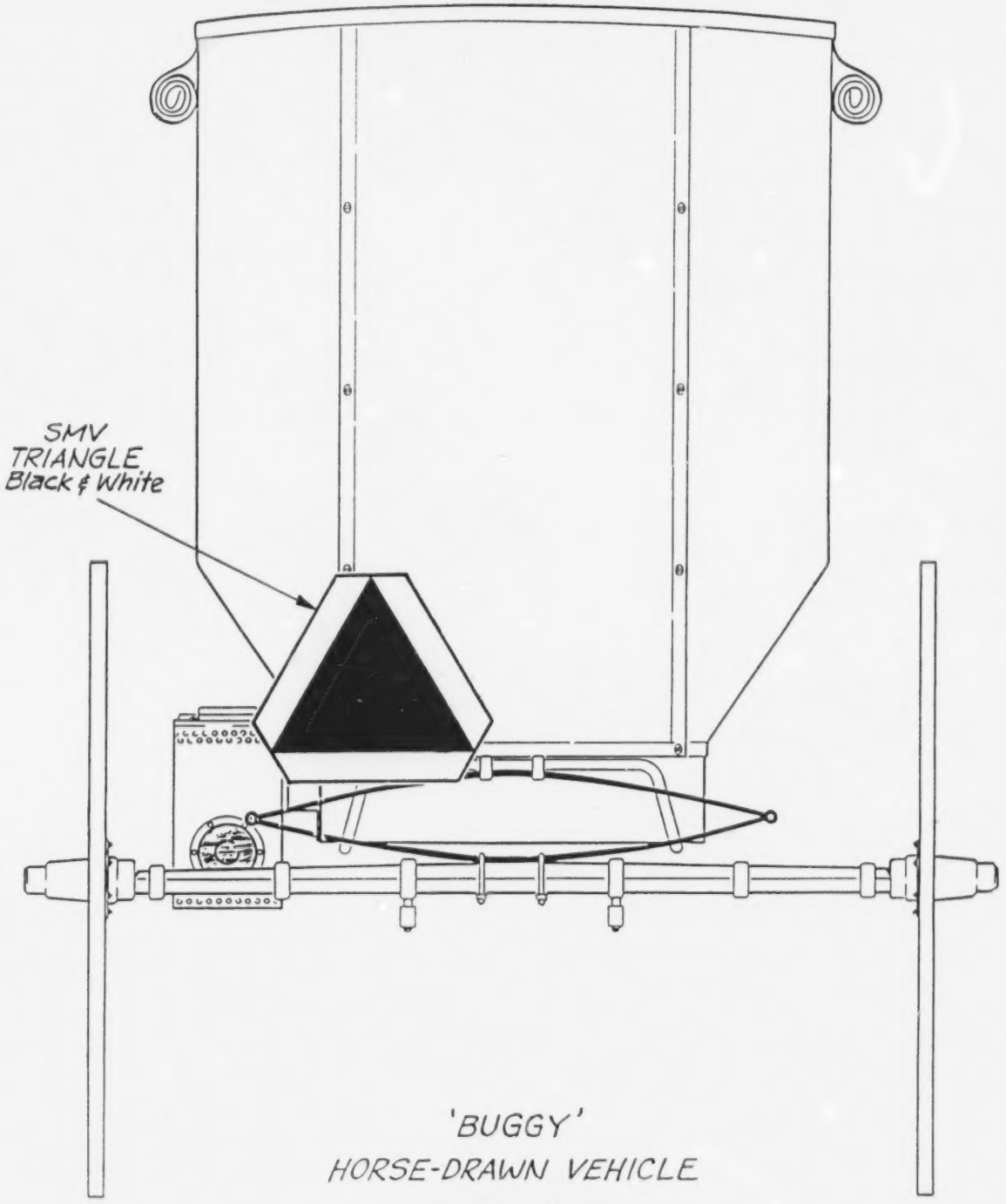
Exhibits from the trial: *State of Minnesota* v. *Eli A. Hershberger*



'BUGGY'
HORSE-DRAWN VEHICLE

REAR

Exhibits from the trial: *State of Minnesota* v. *Eli A. Hershberger*



'BUGGY'
HORSE-DRAWN VEHICLE

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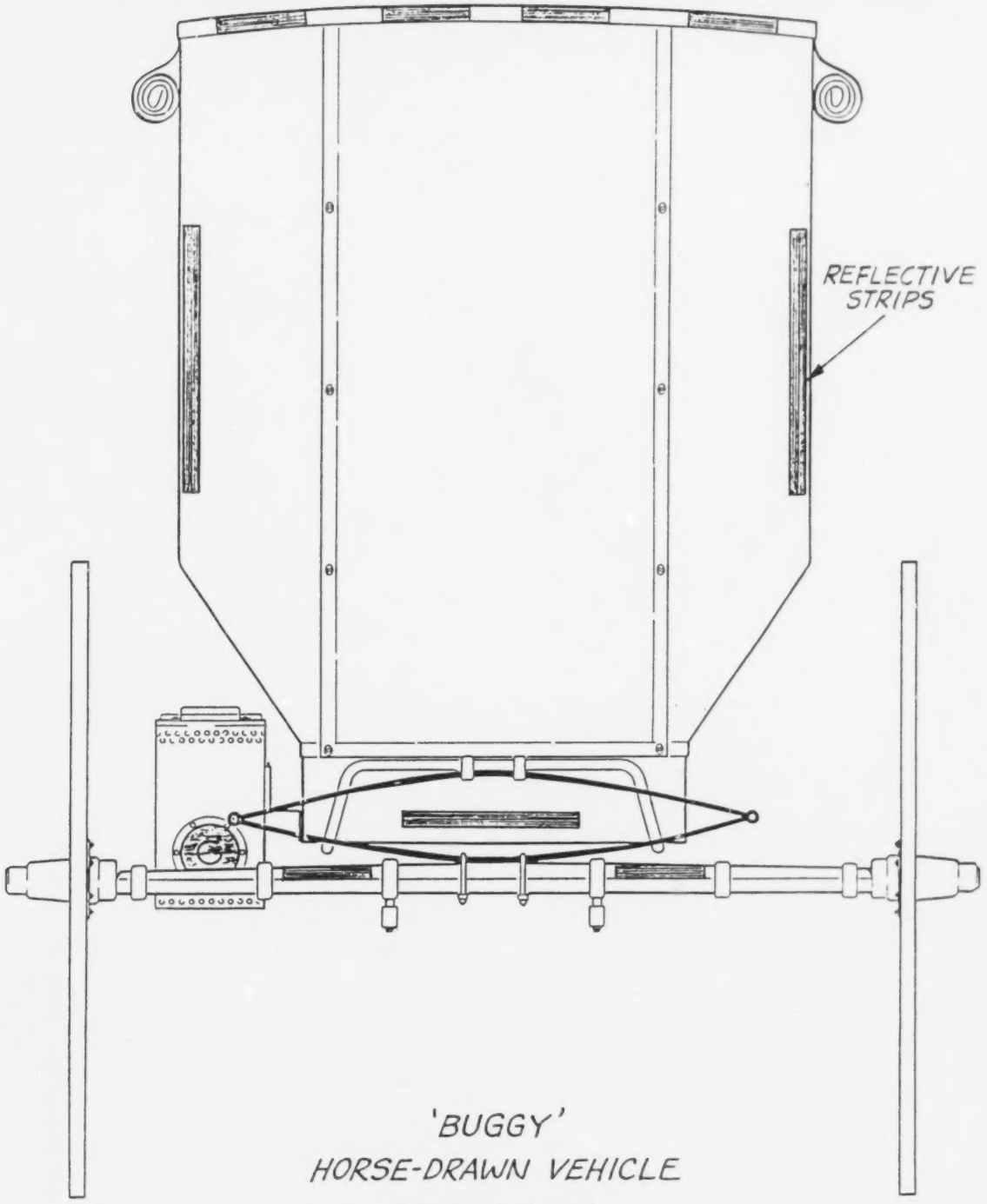
Exhibits from the trial: *State of Minnesota* v. *Eli A. Hershberger*



'BUGGY'
HORSE-DRAWN VEHICLE

REAR

Exhibits from the trial: *State of Minnesota* v. *Eli A. Hershberger*

Mueller v. *Allen*

Learner Outcomes

Students will:

1. Understand the First Amendment's Establishment Clause and distinguish it from the Free Exercise Clause.
2. Learn and apply the three-pronged establishment test to related cases.
3. Explore constitutional issues concerning public tax support for religious schools.
4. Understand arguments for and against financial assistance for non-public schools.

Grade level: Grades 9-12

Time needed: 1-2 class periods

Materials needed: *Copies of* **CASE SUMMARY: *Mueller* v. *Allen***
Student Handout: *MUELLER* v. *ALLEN*
BACKGROUND READING (Optional)

Procedure:

1. Ask students to read the First Amendment to the U.S. Constitution and to discuss the meaning of the phrase "Congress shall make no law respecting the establishment of religion. . . ."

- **a.** What would religion established by government be?
- **b.** Are there countries where such religion exists?
- **c.** What happens to persons who do not believe in the government's religion.
- **d.** Why would the framer's insist on this constitutional provision?

2. Provide students with the information contained in the **BACKGROUND READING.**

3. Have students read the **CASE SUMMARY: *Mueller* v. *Allen*** concerning tax deductions for education expenses. Using the **Case Study Activity** from the introductory materials, have students consider whether they would vote with the majority or the dissent.

4. Working individually or as small groups, have students complete the **Student Handout: *MUELLER* V. *ALLEN*** activity applying the three-pronged test. Discuss.

5. Inform the students that the Minnesota Statute challenged in the *Mueller* case was repealed by the Minnesota Legislature in 1987 in an effort to conform Minnesot tax laws (specifically deductions) to federal tax laws.

Student Handout: *MUELLER* v. *ALLEN*

The First Amendment to the U.S. Constitution provides two protections for religious freedom. First, the federal government and the states (through the 14th Amendment that extends the First Amendment to the states) may not pass laws that are intended to regulate religious beliefs or conduct. People are free to practice their religion of choice. Second, state and federal government may not act in a way that establishes a religion. This restricts government's ability to support religious activities.

What constitutes support? The U.S. Supreme Court has consistently rejected arguments that any program which in some manner aids an institution with a religious connection violates the Establishment Clause of the First Amendment. Instead, the court has applied a three-pronged test to determine if the government action is helping to establish a religion.

(1) Is the purpose of the government action secular (non-religious) in nature?

(2) Is the law's primary effect advancing religious goals?

(3) Does the government's action require its excessive entanglement in the religion?

Applying this test, do you think the following actions violate the First Amendment?

	YES	NO

---

1. **THE STATE REIMBURSES PARENTS FOR THE EXPENSES OF TRANSPORTING THEIR CHILDREN TO A RELIGIOUS SCHOOL.**

Student Handout: *MUELLER* v. *ALLEN* cont.

2. The state reimburses nonpublic schools for the cost of teachers' salaries.

3. The state loans instructional materials to nonpublic schools (instead of to children).

4. The state loans textbooks (non-religious) to all school children.

5. The state grants tax deductions to parents for rental fees paid to the school for musical instruments.

6. The state provides funds for the maintenance and repair of private schools.

Student Handout: *MUELLER* v. *ALLEN* cont.

7. THE STATE GIVES TUITION GRANTS TO PARENTS OF CHILDREN ATTENDING PRIVATE SCHOOLS.

8. THE SCHOOL ENDS CLASSES ONE HOUR EARLY ONE DAY EACH WEEK SO THAT RELIGIOUS INSTRUCTION CAN BE GIVEN IN THE SCHOOL.

9. THE PUBLIC SCHOOL BEGINS EACH MORNING WITH A PRAYER.

10. A STATE ALLOWS PUBLIC SCHOOL TEACHERS TO START THE DAY WITH A PERIOD OF SILENCE FOR "MEDITATION OR VOLUNTARY PRAYER."

Deciding these cases is very difficult. The U.S. Supreme Court has said "we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law."

ANSWER KEY: *Mueller* v. *Allen*

Applying this test, do you think the following actions violate the First Amendment?

Yes **No**

1. The state reimburses parents for the expenses of transporting their children to a religious school.

Answer: No. *Everson* v. *Board of Education,* 330 U.S. 1 (1947). Government programs providing bus transportation to and from school to all students, including parochial school students, do not violate the establishment clause because their purpose and effect is secular. However, state payment for field trips is invalid. *Wolman* v. *Walter,* 433 U.S. 229 (1977).

2. The state reimburses nonpublic schools for the cost of teachers' salaries.

Answer: Yes. *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971). This action involves the risk of excessive government entanglement with religion.

3. The state loans instructional materials to nonpublic schools (instead of to children).

Answer: Yes. *Meek* v. *Pittenger*, 421 U.S. 349 (1975).

4. The state loans textbooks (non-religious) to all school children.

Answer: No. *Board of Education* v. *Allen*, 392 U.S. 236 (1968). The purpose and effect of the action is secular.

ANSWER KEY: *Mueller* v. *Allen* cont.

5. THE STATE GRANTS TAX DEDUCTIONS TO PARENTS FOR RENTAL FEES PAID TO THE SCHOOL FOR MUSICAL INSTRUMENTS.

ANSWER: No. *Mueller* v. *Allen*, 463 U.S. 387 (1983).

6. THE STATE PROVIDES FUNDS FOR THE MAINTENANCE AND REPAIR OF PRIVATE SCHOOLS.

ANSWER: Yes. *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973). This action results in excessive involvement in religion.

7. THE STATE GIVES TUITION GRANTS TO PARENTS OF CHILDREN ATTENDING PRIVATE SCHOOLS.

ANSWER: Yes. *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973). A state may not use a system of grants, tax credits, or tax deductions to reimburse parents or students only for tuition paid to religious schools. However, the Court has allowed tax deductions for all students and parents based upon actual expenses for attending public or private schools (for example, costs of tennis shoes and sweatsuits for physical education). A valid tax deduction must (1)be available for public and private school expenses and (2)include expenses in addition to tuition (so that public school parents may also benefit from the deduction).

8. THE SCHOOL ENDS CLASSES ONE HOUR EARLY ONE DAY EACH WEEK SO THAT RELIGIOUS INSTRUCTION CAN BE GIVEN IN THE SCHOOL.

ANSWER: Yes. *McCollum* v. *Board of Education*, 333 U.S. 203 (1948). Action does not have secular purpose.

ANSWER KEY:*Mueller* v. *Allen* cont.

9. THE PUBLIC SCHOOL BEGINS EACH MORNING WITH A PRAYER.

ANSWER: Yes. *Abington School District* v. *Schempp*, 374 U.S. 203 (1963).

10. A STATE ALLOWS PUBLIC SCHOOL TEACHERS TO START THE DAY WITH A PERIOD OF SILENCE FOR "MEDITATION OR VOLUNTARY PRAYER."

ANSWER: Yes. *Wallace* v. *Jaffree*, 472 U.S. 38 (1985). The court found that the only purpose for the action was to promote religion.

Deciding these cases is very difficult. The U.S. Supreme Court has said "we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law."

CASE SUMMARY: *Mueller* v. *Allen*

463 U.S. 387 (1983)

Minnesota allows taxpayers, in computing their state income tax, to deduct certain expenses incurred in providing for the education of their children. The deduction is limited to actual expenses incurred for the "tuition, textbooks, and transportation" of dependents attending elementary or secondary schools, up to a maximum amount allowed. (Minn.Stat. 290.09)

Mueller and other Minnesota taxpayers sued Clyde Allen, Jr., the Commissioner of the Department of Revenue (in 1983), claiming that the law violated the First Amendment's prohibition on actions that establish religion. The district court disagreed with the taxpayers stating that the statute was "neutral on its face and in its application and does not have a primary effect of either advancing or inhibiting religion." The Federal District Court of Appeals agreed, concluding that the law substantially benefitted a "broad class of Minnesota citizens." The taxpayers appealed to the U.S. Supreme Court.

The U.S. Supreme Court applied the three-pronged test developed in the case *Lemon* v. *Kurtzman*: "First, the statute must have a secular legislative purpose; second, its principle or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster an excessive government entanglement with religion."

In looking at the statute's purpose, the court said "little time need be spent on the question of whether the Minnesota tax deduction has a secular purpose." If there is a reasonable secular purpose for the State's law, which is clear by the words of the statute, the U.S. Supreme Court is reluctant to find that the state has unconstitutional motives. "A state's decision to defray the cost of educational expenses incurred by parents--regardless of the type of schools their children attend--evidences a purpose that is both secular and understandable." The court continued "An educated populace is essential to the political and economic health of any community, and a State's efforts to assist parents in meeting the rising cost of educational expenses plainly serves this secular purpose of ensuring that the State's citizenry is well educated."

In addressing the second part of the test, the court said that it found several features of the Minnesota law that supported the position that the legislation did not advance or inhibit religion. First, the fact that the law is only one among many deductions available under Minnesota tax law; second, the fact that the deduction is available for educational expenses for all parents regardless of the kind of school their children attend; and third, the fact that the financial assistance given through the tax deduction is given directly to the parents, rather than to the school, supports the neutrality of the law.

Turning to the third part of the test, the court found no difficulty in concluding that

CASE SUMMARY: *Mueller* v. *Allen* cont.

the Minnesota statute does not excessively entangle the state in religion. Because the statute does not provide that funds be paid directly to religious schools, the only possibility for excessive involvement lies in the determination of the validity of the deductions.

The U.S. Supreme Court affirmed the decision of the Court of Appeals.

However, the case was decided with a five-four vote. Justice Thurgood Marshall, writing for the dissent, said "the Establishment Clause of the First Amendment prohibits a State from subsidizing religious education, whether it does so directly or indirectly." The dissent asserted that any aid to the educational function of a religious school results in aid to religion because the very purpose of the school is to provide an integrated secular and religious instructional program. To find that the action does not have the primary effect of promoting religion, the aid would need to be restricted to ensure that it would not be used to further the religious mission of the schools. The dissent noted that services such as police and fire protection, sewage disposal, highways, and sidewalks may be provided because this type of assistance is clearly "marked off from the religious functions of those schools."

The dissent continued. "By ensuring that parents will be reimbursed for tuition payments they make, the Minnesota statute requires that taxpayers in general pay for the cost of parochial education and extends a financial incentive to parents to send their children to sectarian schools." The dissent argued that it did not matter that the parents rather than the school receives the financial assistance. "What is controlling significance is not the form but the substantive impact of the financial aid. Insofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions."

The dissent concluded by citing from *Lemon* v. *Kurtzman*. "The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction. . . . The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn."

BACKGROUND READING

RELIGIOUS INTOLERANCE AND PERSECUTION IN THE EARLY AMERICAN COLONIES

The degree of religious freedom that you have today did not exist in Europe, the colonies, or the states formed after the Revolutionary War. Often only one official or "established" religious group was allowed to practice its beliefs. Every subject had to attend its church, obey its requirements, and pay taxes to support it.

Few of the earliest English colonies in North America allowed religious freedom. In fact, in several colonies, especially those in New England, a dominant and intolerant religious group insisted on strict conformity to its own ideas of proper belief and worship.

Dissenters were persecuted. In the early days, some dissenters simply went off into the wilderness and began new colonies of their own. For example, the Reverend Thomas Hooker disagreed with the religious beliefs in Massachusetts. He and his followers left the colony and settled Connecticut. However, their new colony soon became as intolerant in its own way as Massachusetts. The only colonies that tolerated a relatively free expression of religious beliefs and practices were Pennsylvania, Rhode Island, Delaware, and New Jersey.

By the end of the colonial period, people had become more tolerant of religious differences. Many different religious groups existed together in the same communities and people became used to living and working with others who held different beliefs. In some of the colonies, most notably in New England, many people had become less strict about their own religious beliefs and were more willing to accept different points of view. Consequently, with an increased tolerance of religious differences there came greater demands for genuine religious freedom, which were increasingly made by Quakers, Baptists, Catholics, and others.

There was also widespread opposition to the establishment of one church as the official national church. By the time of the ratification of the Constitution and the Bill of Rights, there was a widely held belief that the federal government should not be allowed to establish an official church for the nation. Many agreed that an established church was harmful to religion and bad for the nation.

Finally, some leaders, notably Thomas Jefferson and James Madison, were greatly concerned about the dangers of religious intolerance. They were well aware that throughout history, religious intolerance had often led to conflict rather than cooperation and to a violation of the basic rights of individuals.

BACKGROUND READING cont.

THE ESTABLISHMENT OF RELIGION IN THE STATE GOVERNMENTS

Even though many of the Founders believed strongly in religious tolerance, a number of the state constitutions deprived members of some religious groups of the rights people who were members of other religious groups had. For example, some states did not allow Catholics of Jews to vote or hold public office. In Massachusetts and Maryland, no one but a Christian was allowed to become governor. For many years, New Hampshire, New Jersey, Massachusetts, and North Carolina required that office holders be Protestants. Even Pennsylvania, which had a bill of rights protecting the "inalienable right of all men to worship God according to the dictates of their own conscience," still disqualified Jews and non-Christians from public office. New York and Virginia were the only states that did not have any restrictions on religious beliefs for persons serving in their state governments.

However, soon after 1776, important changes began to be made in those states in which religion had been established as an official part of the government. Between 1776 and 1789, New York, Virginia, and North Carolina eliminated state-established religion. Massachusetts, Connecticut, and New Hampshire decided to allow Anglicans and other Protestants to join Congregationalists as a part of the established church. In Maryland, the Constitution written in 1776 gave the legislature the right to tax citizens to support the Christian religion. However, each person was free to decide which denomination should receive his tax money.

The constitution of South Carolina, written in 1778, said that the Protestant Christian religion was to be the established religion of the state and all Protestant groups would have equal rights and privileges including financial support from tax funds.

These changes meant that in some states there was still an established religion, but it was not just one church or denomination. The established religion, however, was Protestant Christianity. Catholics, Jews, and members of other religions were not entitled to tax support. It was not until 1833 when Massachusetts changed its constitution to separate church and state that the last established religion in the states was eliminated.

BACKGROUND READING cont.

THE FOUNDERS' RELIGIOUS BELIEFS PROMOTE FREEDOM OF RELIGION

Most of the Founders were religious people. Despite the history of intolerance, the influence of some of their religious beliefs resulted in promoting the freedom of religion which we have today.

The Founders believed that you have certain natural rights simply because you are a human being. This belief developed in part out of the Puritan idea that God has given you a moral sense and the ability to reason which enables you to tell the difference between what is right and wrong. Philosophers such as John Locke argued that society should allow you to live the way your moral sense, guided by the Bible, tells you is right. The best government, therefore, they believed, is the one that interferes as little as possible with your beliefs, including religious belief, although many did not support tolerance for you if you did not believe in God.

The founders, it is important to remember, believed that religion is extremely important in developing the kind of character citizens of a free society needed to have in order to remain free. For example, George Washington said in his farewell address that virtue and morality are necessary for a government run by the people. He also believed that morality could not be maintained without religion. At the same time, he joined Thomas Jefferson and James Madison in opposing a bill introduced into the Virginia legislature which would have used tax money to pay for religion teachers.

Madison had been the author of the parts of the Virginia Declaration of Rights, passed in 1776, that provided for freedom of religion. Religion, he insisted, "can be directed only by reason and conviction." Jefferson later wrote the Act for Establishing Religious Freedom which led to the end of an established church in Virginia. Both were acting on the basis of their belief that our right to liberty includes the liberty to believe as our conscience and reason direct. Established churches, they insisted, violate this basic right.

It is clear that the Founders thought religion was an important part of the society. At the same time, they believed strongly that each person has a natural right to his or her own religious beliefs. The separation of the church and state required by the First Amendment is an expression of this belief.

BACKGROUND READING taken from **"We the People"** A Secondary Level Student Text
Center for Civic Education 5145 Douglas Fir Road. Calabasas, CA 91302

Hodgson v. *Minnesota*

Learner Outcomes

Students will:

1. Understand the role of the court in weighing competing interests in making decisions.
2. Develop opinions on the role of the court and legislature in regulating minors' lives.
3. Learn about the power of the courts and the legislature to regulate constitutional rights.

Materials needed: *Copies of* **BACKGROUND READING: Dr. Jane Hodgson, the abortion rights crusader** (optional)
CASE SUMMARY: *Hodgson* v. *Minnesota*
Student Handout: *HODGSON* v. *MINNESOTA*

Grade level: Grades 9-12

Time needed: 1-2 class periods

Procedure:

1. Explain to students that they will be considering a case that affects a very controversial constitutional right: the privacy right for a woman to have an abortion.

2. Emphasize that the goal of the lesson is not to debate the Court's decision in *Roe* v. *Wade* but instead is to consider how the legislature has the power to develop regulations surrounding constitutional rights. (For example, the legislature has written laws that govern the First Amendment in the area of free press and defamation.)

3. Ask students why legislatures have this power. Is it to ensure that other's rights are not violated? Protecting the rights of all is a very difficult task. Explain that legislatures and courts weigh the interests of various groups when deciding solutions to problems. (In the free press example, the newspaper's right to publish, the public's right to know, and an individual's right to privacy and reputation are weighed and compared when developing laws that regulate this area.)

4. Have students brainstorm the interests of the state, parents, and minors in the health care issues of minors. (Emergency medical care, vaccinations, diet (school lunches), etc.) List on the board.

Procedure cont.

Interests might include:

State: sometimes pays for the health care
wants a healthy population
if kids are treated badly, state looks bad
investment in future
promote supportive family environment so that state does not have to take on that role

Parents: love children
want and know what is best for children
privacy of family
reputation as loving parents
"a man's home is his castle"
need to be in control

Minors: privacy
know what is best
must live with the decision forever
want to be treated as an adult
equal rights
however, may not want to be responsible

5. Explain that one health care issue of great controversy is in the area of reproductive rights.

6. Explain the background of Dr. Jane Hodgson to the students. **(BACKGROUND READING: Dr. Jane Hodgson, the abortion rights crusader.)**

7. Have students read the **CASE SUMMARY**: ***Hodgson* v. *Minnesota*.** Review the legislation and discuss competing interests. What interests did the court identify? Are there interests that are missing?

8. To keep the focus of the case analysis on the constitutionality of the Minnesota notification law, have students complete the **Student Handout: *Hodgson* v. *Minnesota*** . Tell students that the survey items are actual statements made by the court in the decision (which consisted of several opinions). These statements were made by the justices in support of their positions.

9. Select several statements, discuss, and determine if the class agrees or disagrees with the court's reasoning. Members of the class might favor the positions held by the dissenting judges or by the majority judges. (Although the survey does not indicate which statements belong to the dissent or to the majority, in most cases it is fairly clear.)

10. Ask students how they would vote if they were judges on the court.

11. Have students evaluate the court's effort to protect the competing interests. Was it fair? Effective? Is there a better solution?

BACKGROUND READING: Dr. Jane Hodgson, the abortion rights crusader

"On April 29, 1970, Dr. Jane Hodgson performed an abortion on Nancy Kay Widmyer in the Charles T. Miller Hospital, St. Paul, Minnesota. Nancy was a twenty-three-year-old mother of three children--six, three, and two years old--and the wife of a construction worker. She and her children had recently gone through a bout of rubella, which most people call German measles. Because she knew that women who contract rubella early in pregnancy suffer a great risk of having a deformed child, Nancy consulted Dr. Hodgson, her obstetrician, for advice. The doctor and her patient agreed that terminating the pregnancy was the best choice for Nancy. The abortion was uncomplicated and Nancy left the hospital in good health.

"The abortion was also illegal in Minnesota. . . .Dr. Jane Hodgson was an unlikely crusader against Minnesota's criminal abortion law, which banned all abortions except those required to save a pregnant woman's life. She could have performed the abortion on Nancy Widmyer quietly, without risking a prison term or loss of her medical license. Dr. Hodgson was no back-alley abortionist--she was. . .fifty five years old in 1970, a 1940 graduate of the University of Minnesota Medical School and former resident at the prestigious Mayo Clinic in Rochester, Minnesota. In thirty years of practice, she had delivered more than four thousand babies and performed fewer than a dozen abortions. Much of her practice and research was aimed at improving fertility and helping her patients have healthy, wanted children."

The Courage of Their Convictions

Dr. Hodgson was indicted on May 21, 1970. She was convicted after a five-day trial and sentenced to a suspended thirty-day jail term and a year of unsupervised probation. After her criminal conviction, she appealed to the U.S. Supreme Court, which refused to hear the case, and the Minnesota Supreme Court, which simply sat on the appeal for more that two years.

During that time, twenty eight states removed some barriers to legal abortions. Minnesota was not one of them. Neither was Texas, where a poor women named Norma McCorvey finally persuaded the U.S. Supreme Court to listen. Disguising herself as

Procedure cont.

Interests might include:

State: sometimes pays for the health care
wants a healthy population
if kids are treated badly, state looks bad
investment in future
promote supportive family environment so that state does not have to take on that role

Parents: love children
want and know what is best for children
privacy of family
reputation as loving parents
"a man's home is his castle"
need to be in control

Minors: privacy
know what is best
must live with the decision forever
want to be treated as an adult
equal rights
however, may not want to be responsible

5. Explain that one health care issue of great controversy is in the area of reproductive rights.

6. Explain the background of Dr. Jane Hodgson to the students. **(BACKGROUND READING: Dr. Jane Hodgson, the abortion rights crusader.)**

7. Have students read the **CASE SUMMARY**: ***Hodgson* v. *Minnesota*.** Review the legislation and discuss competing interests. What interests did the court identify? Are there interests that are missing?

8. To keep the focus of the case analysis on the constitutionality of the Minnesota notification law, have students complete the **Student Handout: *Hodgson* v. *Minnesota*** . Tell students that the survey items are actual statements made by the court in the decision (which consisted of several opinions). These statements were made by the justices in support of their positions.

9. Select several statements, discuss, and determine if the class agrees or disagrees with the court's reasoning. Members of the class might favor the positions held by the dissenting judges or by the majority judges. (Although the survey does not indicate which statements belong to the dissent or to the majority, in most cases it is fairly clear.)

10. Ask students how they would vote if they were judges on the court.

11. Have students evaluate the court's effort to protect the competing interests. Was it fair? Effective? Is there a better solution?

BEST COPY AVAILABLE

CASE SUMMARY: *Hodgson* v. *Minnesota*

497 U.S. ___ (1990) or 110 S.Ct. 2926 (1990)

In 1981, the Minnesota Legislature passed a law providing that:

(1) no abortion was to be performed on an unemancipated minor (minor under the direction and care of a parent or guardian) until at least 48 hours after the minor's physician or an agent gave written notice to the parent (defined in the law to mean both parents) either by delivery personally to the parent or by certified mail, and

(2) such notice was mandatory unless

(a) the attending physician certified that an immediate abortion was necessary to prevent the minor's death and there was insufficient time to provide the required notice,

(b) the abortion was authorized in writing by the person or persons entitled to notice, or

(c) the minor declared that she was a victim of parental abuse or neglect, in which case notification of the abuse had to be given to the proper authorities.

The legislature, planning for the likelihood that the law would be challenged and found unconstitutional, added a provision that is commonly called the ***"judicial bypass provision."*** It stated:

(3) If the minor did not want to comply with the notification requirements, she could ask a judge to authorize an abortion if the judge determined that

(a) the minor was mature and capable of giving informed consent, or

(b) an abortion without parental notification would be in the minor's best interest.

In 1981, two days before the law was to become effective, Dr. Hodgson and others filed a lawsuit, claiming that the law was a violation of the Minnesota and U.S. Constitutions. In 1982, the Federal District Court issued a preliminary injunction, stopping the application of parts 1 and 2, which required parental notification without the judicial bypass, until a trial could be held.

After a five-week trial in 1986, the court found that the law was unconstitutional. On appeal, the U.S. Court of Appeals for the Eighth Circuit reversed the district court's

CASE SUMMARY: *Hodgson* v. *Minnesota* cont.

judgment. The U.S. Supreme Court agreed to hear the case. A majority of the members of the U.S. Supreme Court decided that although the two-parent notice requirement without judicial bypass (parts 1 and 2) was unconstitutional, the provision of the bypass in the law (part 3) made the notice requirement and the 48-hour wait constitutional.

In an five-four decision, the court balanced the interests of three groups: the state, parents, and minors.

First, "the State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." The court found that the 48-hour wait reasonably furthered the legitimate state interest in making sure that the minor's decision is knowing and intelligent.

However, the court also found that the notification of both parents did not further a legitimate state interest. The court said "Not only does two-parent notification fail to serve any state interest with respect to functioning families, it disserves the state interest in protecting and assisting the minor with respect to dysfunctional families. . . .In these circumstances {divorce, absent parent, abuse, neglect}, the statute was not merely ineffectual in achieving the State's goals but actually counterproductive." The court said that although the state claims that the main purpose of the law is to protect the well-being of minors by encouraging them to discuss with their parents the decision to terminate their pregnancies, the state could not require family members to talk to one another.

"Second, parents have an interest in controlling their childrens' education and upbringing, and a natural parent's stake in the relationship with a child may rise to the level of a protected liberty interest if the parent has demonstrated his commitment by assuming personal, financial, or custodial responsibility for the child." The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed essential. However, the court questioned the requirement of notification to both parents, stating that providing other medical care to minors only requires the notification and consent of one parent.

After acknowledging that a parent's interest in shaping a child's values and lifestyle is important, the court said it cannot overcome the liberty interest of a minor acting with the consent of a single parent. "It follows that the combined force of the separate interest of one parent and the minor's privacy interest must outweigh the separate interest of the second parent."

The court further addressed the minor's interests by providing reasons for treating minor women differently than adult women. "Parental notice and consent are qualifica-

CASE SUMMARY: *Hodgson* v. *Minnesota* cont.

tions that typically may be imposed by the State on a minor's right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of the minor." However, the court weighed the state's interest in the two-parent notification requirement against the minor's constitutional right to decide whether or not to bear a child (protected by the Due Process Clause of the 14th Amendment) and determined that the minor's interest outweighed the state's interest.

Thus, the court held that the two-parent notification requirement was unreasonable and overburdensome on the minor and found it unconstitutional.

The court then went on to consider the judicial bypass provision. Declaring the provision constitutional, the court agreed with the state's argument that the bypass procedure saves the notification and delay requirements because it provides an alternative way to obtain a legal abortion for minors who would be harmed by those requirements.

The court's decision in *Hodgson* is actually two decisions. First, a majority of the members of the court joined in an opinion holding that the two-parent notice requirement **without** judicial bypass was unconstitutional. Second, although unable to agree on an opinion (resulting in several concurring opinions) five members agreed that the two-parent notification requirement **with** the judicial bypass provision was constitutional.

Student Handout: *HODGSON* v. *MINNESOTA*

The following statements were made by the Justices of the U.S. Supreme Court in their opinions for *Hodgson* v. *Minnesota*. Some of the statements were taken from the majority opinions, some from the dissenting opinions. Which do you agree with? Mark each statement according to your opinion. Do you:

Strongly **D**isagree **D**isagree **U**ndecided **A**gree **S**trongly **A**gree

	SD	D	U	A	SA
1. The State has a strong and legitimate interest in the welfare of its young citizens.					
2. Young people are immature, inexperienced, and lack judgment. This impairs their abilities to exercise their rights wisely.					
3. The State has no legitimate interest in conforming family life to a state-designed ideal by requiring family members to talk together.					
4. Requiring notification of both parents discourages parent-child communication.					
5. A natural parent who has demonstrated sufficient commitment to his or her children is entitled to raise the children free from undue state interference and should not be required to notify an absent parent.					
6. It is clear that a requirement that a minor wait 48 hours after notifying a single parent of her intention to get an abortion would reasonably further the legitimate state interest in ensuring that the minor's decision is knowing and intelligent.					
7. In thousands of dysfunctional families affected by this statute, the two-parent notice requirement would prove positively harmful to the minor and her family.					
8. The State has no more interest in requiring all family members to talk with one another than it has in requiring certain of them to live together.					

Student Handout: *HODGSON* v. *MINNESOTA* cont.

	SD	D	U	A	SA
9. Minors are treated differently from adults in our laws, which reflects the simple truth that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life.					
10. Neither the scope of a woman's privacy right nor the magnitude of a law's burden is diminished because a woman is a minor.					
11. Requiring a minor to wait 48 hours after notifying a parent reasonably furthers legitimate state interests.					
12. A notification requirement compels many minors seeking an abortion to travel to a State without such a requirement to avoid notifying a parent.					
13. A substantial proportion of pregnant minors voluntarily consult with a parent regardless of the existence of a notification requirement.					
14. The prospect of having to notify a parent causes many young women to delay their abortions thereby increasing the health risks of the procedure.					
15. The 48 hour delay is designed to provide parents with adequate time to consult with their daughters.					
16. Forced notification in dysfunctional families is likely to sever communication patterns and increase the risk of violence.					
17. The requirement permits parents to provide doctors with relevant information about their daughters' medical history and to assist with ensuring that proper after-care procedures are followed.					
18. The delay period permits the parent to inquire into the competency of the doctor performing the abortion.					

Student Handout: *HODGSON* v. *MINNESOTA* cont.

	SD	D	U	A	SA
19. The statute serves the interest of protecting parent's independent right to determine and strive for what they believe to be best for their children.					
20. The judicial bypass procedure is unconstitutional because it effectively gives a judge an absolute veto over the decision of the physician and his patient.					
20. Some minors are so upset by the bypass procedure that they consider it more difficult than the medical procedure itself.					
21. The law does not give to children many rights given to adults, and provides, in general, that children can exercise the rights they do have only through and with parental consent.					
22. A State pursues a legitimate end under the Constitution when it attempts to foster and preserve the parent-child relationship by giving all parents the opportunity to participate in the care and nurture of their children.					
23. In many families, whether the parents are living together or apart, notice to both parents serves the interests of the parents and the minor.					
24. When dealing with extremely sensitive issues, such as the one involved here, the appropriate forum for their resolution is the legislature.					
25. We should not forget that the legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.					

Minnesota v. *Murphy*

Learner Outcomes

Students will:

1. Consider the meaning of the Fifth Amendment privilege against self-incrimination.
2. Understand the historical basis for "pleading the fifth" in criminal cases.
3. Learn about the development of a constitutional right through Supreme Court cases.
4. Apply the self-incrimination decisions to a related situation.

Materials needed: *Copies of*
BACKGROUND READING: Pleading the Fifth (optional)
Student Handout: FIFTH AMENDMENT
CASE SUMMARY: *Minnesota* v. *Murphy*
Student Handout: CONFESSION CASES
Student Handout: ARGUMENTS FOR SUPPRESSION OF CONFESSION
Student Handout: ARGUMENTS AGAINST SUPPRESSION OF CONFESSION
Student Handout: DECISION: *MINNESOTA* v. *MURPHY*

Time needed: 2-3 class periods

Grade level: Grades 9-12

Procedure:

1. Begin by asking students to discuss their understanding of "pleading the fifth." What does it mean? Who can plead? Can a person plead the fifth in any situation? At home? In school? When stopped by the police?

2. Ask students why a person would plead the Fifth Amendment?

3. Have students read **Student Handout: FIFTH AMENDMENT**. Ask them to identify the language that gives them the power to refuse to answer questions that might incriminate them in criminal actions.

4. Explain to students that the limitations on actions by federal government employees required by the protections of the Fifth Amendment have been extended to states through the Fourteenth Amendment. (**BACKGROUND READING: Pleading the Fifth**)

Procedure cont.

5. Discuss what happens when the Fifth Amendment protections are violated. If an individual is entitled to a *Miranda* warning (when the person is in police custody), but is not given the warning, the confession is inadmissible. If an individual is not in a typical custody situation, but does not have a choice about answering incriminating questions, and is not informed of the right to remain silent, the confession will be inadmissible. If a person is merely being asked to volunteer information and is free to speak or remain silent without penalty, a confession given without a warning of the right to remain silent is admissible.

6. Ask students to imagine what would happen if no Fifth Amendment privilege against self-incrimination existed. Would persons be forced to confess to crimes they did not commit by threats and torture?

7. Using the information contained in the **BACKGROUND READING: Pleading the Fifth**, tell students about the development of the Fifth Amendment privilege. Using **Student Handout: CONFESSION CASES,** discuss the cases that were instrumental in the development of the right as it exists today.

8. Ask students to consider situations that are not typical custody cases (in police custody) that would warrant the availability of the right to remain silent. In what type of situations would a person feel forced to tell what he or she knows? If the reason for the Fifth Amendment privilege against self-incrimination is to prevent "coerced confessions," in what type of situations would these confessions be obtained.

9. Explain to students that the courts look at the circumstances surrounding situations in their efforts to decide if the Fifth Amendment privilege applies (thus prohibiting the use of the confessions in criminal prosecutions.) Facts the courts consider:

a. Did the defendant feel free to answer or remain silent?

b. Did the defendant believe that there was a penalty for remaining silent?

c. Did the questioner believe that the defendant would feel compelled to answer and would believe that a penalty would be given for silence?

d. Did the questioner believe that the answers would be incriminating?

10. Have students apply their understanding of the privilege against self-incrimination to a 1984 case *Minnesota* v. *Murphy*. Ask students to read the **CASE SUMMARY: *Minnesota* v. *Murphy*.** Using the **Case Study Activity** provided in the introductory materials, discuss the facts and the issues.

11. Divide students into two groups. One group will represent Murphy, arguing for the privilege against self-incrimination and suppression of the confession. The second group will represent the state of Minnesota, arguing that the privilege does not apply and that the confession should be admissible.

Procedure cont.

12. Using the **Moot Court Simulation** contained in the introductory materials, argue the case to a student Supreme Court. Suggested arguments for each side are provided. (**Student Handouts: ARGUMENTS FOR/AGAINST SUPPRESSION OF CONFESSION**) In addition, students should be encouraged to develop their own arguments. (The **ARGUMENTS** include facts from the case and Supreme Court decisions from other cases.)

13. Review the student court's decision. Do other students agree? Share the U.S. Supreme Court decision with the students. (**Student Handout: DECISION: *Minnesota* v. *Murphy***)

14. Students may have specific questions concerning their right to remain silent. A criminal defense lawyer would be an excellent resource person to answer these questions. Contact the local public defender's office or the state public defender for possible guest speakers.

Student Handout: FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

BACKGROUND READING: Pleading the Fifth

Most criminal cases that contain confessions by the defendant must address the Fifth Amendment provision that says no person "shall be compelled in any criminal case to be a witness against himself." A brief history of this so-called privilege against self-incrimination is necessary to understand its application to the law of confessions.

Historically in England, people were frequently called and questioned under oath even though the court had no formal accusation against the person. The oath compelled the person to produce testimony that later supplied the basis for a criminal charge. By the seventeenth century, substantial opposition had developed to this procedure, and the principle "no man shall be compelled to accuse himself" developed.

In our courts today, for confessions to be admissible, due process requires that they be voluntary. Voluntariness is assessed by looking at the totality of the circumstances surrounding the confession including the suspect's age, education, and mental and physical condition, along with the setting, duration, and manner of police interrogation. Some official compulsion or coercion must be present to render a statement involuntary and therefore inadmissible.

This constitutional protection has not always been available to defendants. The development took many years and several key cases. Applying the Fifth Amendment to the U.S. Constitution, the Supreme Court gradually developed the protection against self-incrimination.

In *Bram* v. *United States*, 168 U.S. 532 (1897), the U.S. Supreme Court ruled that the "voluntariness" of a confession in federal courts had to be determined under the Fifth Amendment Self-Incrimination Clause. In 1943, the Court held that confessions were inadmissible in federal courts if obtained during a period of unnecessary delay in taking an arrested defendant to court for preliminary arraignment. However, the Fifth Amendment did not protect individuals being tried in state courts.

Reviewing for the first time a state conviction involving a confession issue, the Supreme Court held in *Brown* v. *Mississippi*, 297 U.S. 278 (1936), that the Fourteenth Amendment Due Process Clause governed the admissibility of confessions in state cases.

After thirty years of due process analysis in approximately forty Supreme Court cases, the Court finally incorporated the Fifth Amendment self-incrimination clause into the Fourteenth Amendment and in this way applied the Fifth Amendment to the states (*Malloy* v. *Hogan*), 378 U.S. 1 (1964). Only one year after applying the right to counsel to state **trials** in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), the Court extended the right to counsel to **custodial interrogation** in *Escobedo* v *Illinois*, 378 U.S. 478 (1964). Two

BEST COPY AVAILABLE

BACKGROUND READING: Pleading the Fifth cont.

years later, in *Miranda* v. *Arizona*, 384 U.S. 436 (1966), the court moved to a self-incrimination clause analysis in custodial interrogation which placed strict limitations on police efforts to obtain confessions. Since then, most confession cases have involved *Miranda*-related issues.

Under *Miranda*, a person in custody must, before being interrogated, be clearly informed that:

1. He or she has the right to remain silent;
2. That anything he or she says can be used against him or her in court;
3. That he or she has the right to an attorney; and that
4. If he or she cannot afford an attorney, one will be appointed by the court, if desired.

If an accused indicates in any manner at any time that he or she wishes to remain silent, the interrogation must end. If an accused requests an attorney, all questioning must end until the attorney is present or the defendant initiates new communication.

An issue that is related to the initiation of new communication concerns the waiver of *Miranda* rights. In other words, did the defendant waive his or her rights when he or she later talked? To be waived, the prosecution must prove that the waiver was knowing, voluntary, and intelligent.

Any confession obtained through violation of these rules will be inadmissible in a criminal trial.

Although, *Miranda* makes it clear that in a custodial situation (for example, after being arrested), defendants have the right to be notified of their right to refuse to answer questions that might incriminate them in criminal cases ("pleading the fifth"), the right to be notified is not so clear in non-custodial situations. In these cases, the court looks for surrounding circumstances that either call for a *Miranda* warning prior to questioning or circumstances that require an individual to assert his or her right to remain silent without being reminded of Fifth Amendment protections.

ISSUES:

1. Is it a custodial situation, giving the defendant the right to be told of his or her constitutional rights? If so, failure to notify of constitutional rights will make confessions inadmissible.

BACKGROUND READING: Pleading the Fifth cont.

2. If it is not a custodial situation such as in *Miranda*, are there other circumstances that would indicate a right to be told of the self-incrimination protection? The Court has expanded custodial interrogation to include situations where the defendant is "deprived of his or her freedom of action in any significant way."

3. Is the person being compelled to answer? Is the statement voluntary? What will happen if the person refuses to answer? Is there a penalty for refusing to answer? If the circumstances indicate that the person was not free to answer or keep silent-- if there is sufficient penalty for not answering the question-- failure to plead the protection of the Fifth Amendment, in absence of a warning that statements made might be used in a criminal prosecution, is not a waiver of Fifth Amendment protection and will not bar the defendant from suppressing the evidence during the trial.

4. Is the person free to answer as he or she chooses? Free to leave the scene? Is there no penalty for refusing to answer? In these cases, it is the responsibility of the individuals to assert their rights to speak or remain silent. If they choose to speak, any confession they make can be used in a criminal case. They are deemed to have waived their priviledge against self-incrimination.

The Court has limited the application of *Miranda* in situations that do not constitute "custody" in a police station. The Court narrowed *Miranda* in *Minnesota* v. *Murphy*, a 1984 Minnesota case.

CASE SUMMARY: *Minnesota* v. *Murphy*

465 U.S. 419 (1984)

In 1974, Marshall Murphy was twice questioned by Minneapolis police concerning the rape and murder of a teenage girl. No charges were brought against Murphy. In 1980, Murphy pleaded guilty to a false imprisonment charge arising out of a separate sex-related incident and was given a suspended prison sentence and placed on probation. The terms of his probation required him to participate in a treatment program for sexual offenders, to report to his probation officer periodically, and to be truthful with the probation officer. He was given a letter setting forth the conditions of probation. The letter provided:

> **"For the present you are only conditionally released. If you comply with the conditions of your probation you may expect to be discharged at the expiration of the period stated. If you fail to comply with the requirements you may be returned to Court at any time for further hearing or commitment. . . .**
>
> **"It will be necessary for you to obey strictly the following conditions:**
>
> **"BE TRUTHFUL to your Probation Officer in all matters." (Emphasis in original.)**

Murphy was required to sign the letter, indicating that he had read it and understood the instructions.

Murphy met with his probation officer approximately once a month, and his probation continued without incident until July 1981 when the probation officer learned that he had stopped his treatment program. The officer wrote to Murphy, informing him that failure to set up a meeting would result in an immediate warrant for his arrest. Murphy met with his probation officer in late July. The officer agreed not to seek revocation of his probation for noncompliance because Murphy was employed and doing well in other areas.

In September, Murphy's former counselor in his treatment program informed the probation officer that during one treatment session, Murphy admitted to raping and murdering a young girl. The probation officer decided that the police should have this information. However, she did not provide the information to the police until after a meeting with Murphy.

The probation officer wrote to Murphy, asking him to meet with her to discuss a treatment plan for the remainder of his probation. She did not tell Murphy of her information concerning the rape and murder or about her intent to question him about the crimes.

CASE SUMMARY: *Minnesota* v. *Murphy* cont.

Murphy met with the probation officer on September 28, 1981. The officer opened the meeting by telling Murphy about the information she had received from the counselor and stating her belief that Murphy needed to continue treatment. Murphy became angry about what he considered to be a breach of his confidence and stated that he "felt like calling a lawyer." The officer told Murphy that he would have to deal with that problem outside of the office. The probation officer explained that her primary concern was the relationship between the crimes that Murphy had admitted to in treatment and the sex-related incident that led to his conviction for false imprisonment.

During the conversation, Murphy denied the false imprisonment charge but admitted to committing the rape and murder. He tried to convince the probation officer that he did not need further treatment because several extenuating circumstances explained the 1974 crime. At the end of the meeting, the officer told Murphy that she had a duty to tell the police about the murder and rape and tried to convince Murphy to turn himself in.

Murphy left the office. Two days later, he called to tell the probation officer that his lawyer had advised him not to surrender to the police. On October 29, 1981, Murphy was indicted for first-degree murder.

Murphy sought to suppress the testimony concerning his confession on the ground that it was obtained in violation of the Fifth and Fourteenth Amendments. The trial court found that he was not "in custody" at the time of the statement and that the confession was neither compelled nor involuntary. The Minnesota Supreme Court reversed, stating that although Murphy was not in custody in the usual sense (thus being entitled to a *Miranda* warning), he was entitled to have the confession suppressed because of

(1) the compulsory nature of the meeting,

(2) the requirement that Murphy respond truthfully to the probation officer's questions, and

(3) the probation officer's belief that Murphy's answers were likely to be incriminating. In the Court's view, the probation officer should have warned Murphy of his privilege against compelled self-incrimination before she questioned him and that her failure to do so prohibited the use of the confession at Murphy's trial for rape and murder.

The case was appealed to the U.S. Supreme Court.

Student Handout: CONFESSION CASES

Brown v. *Mississippi* 297 U.S. 278 (1936)

In this case, the defendants, prior to confessing, had been hung from a tree limb and repeatedly whipped. A deputy had informed one defendant that the whipping would continue until the defendant confessed. The Supreme Court held that a state could not use a confession obtained by such violence as the basis for a conviction. Because of *Brown*, a conviction cannot be obtained through the use of a "coerced" or "involuntary" confession.

Escobedo v. *Illinois* 378 U.S. 478 (1964)

Shortly after the defendant's arrest for murder, the defendant's lawyer arrived at the police station and asked to see the defendant. The police refused and throughout the night continued to deny the lawyer's repeated requests. The police also ignored the defendant's repeated requests to see his lawyer. During interrogation, the defendant denied the crime, even when confronted with a statement that a co-defendant had implicated him. When the police brought the co-defendant into the room, the defendant said "I didn't shoot Manual, you did it." Through this statement, the defendant showed that he knew something about the crime. Soon after, the defendant confessed to being involved in the murder. At no time, did the police warn the defendant of his right to refuse to answer questions. The Supreme Court held that the defendant needed the "guiding hand of counsel" to advise him of his rights and that the confession was unconstitutional.

Miranda v. *Arizona* 384 U.S. 436 (1966)

In this case, the defendant, Ernesto Miranda, had been arrested in his home and then taken to a Phoenix police station where he was questioned by two police officers. After two hours in a separate interrogation room, he made a written confession. He was subsequently convicted of kidnapping and rape. The Court held that confessions obtained through custodial interrogation cannot be used in a trial unless the defendant was told of his right to remain silent and right to have an attorney.

Student Handout: ARGUMENTS FOR SUPPRESSION OF CONFESSION

1. The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." It has long been held that this prohibition not only permits a person to refuse to testify against himself in a criminal trial in which he is a defendant, but also "privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings."

Lefkowitz v. *Turley*

2. Murphy was required by the court to answer the questions of his probation officer truthfully. Failure to answer truthfully could result in the revocation of his probation.

3. "If an officer of a State asks a person a question under circumtances that deprive him of a 'free choice' to admit, to deny, or to refuse to answer, and he answers the question without attempting to assert his privilege against self-incrimination, his response will be deemed to have been 'compelled' and will be inadmissible as evidence against him."

Garner v. *United States*

4. "The State will be found to have deprived the person of such 'free choice' if it threatens him with a substantial sanction if he refuses to respond."

Lefkowitz v. *Turley*

5. "If a threatened person decides to talk instead of asserting his privilege, the State cannot use his admissions against him in a subsequent criminal prosecution."

Garrity v. *New Jersey*

6. "If a State presents a person with the choice of incriminating himself or suffering a penalty, and he nevertheless refuses to respond, the State cannot constitutionally make good on its threat to penalize him."

Sanitation Men v. *Commissioner of Sanitation*

Student Handout: ARGUMENTS FOR SUPPRESSION OF CONFESSION cont.

7. A reasonable person would interpret the language "be truthful . . .in all matters" as a command to answer honestly all questions presented including questions that might result in incriminating answers.

8. The threat of revocation of probation for failure to answer truthfully was enough of a penalty to make any confession involuntary and therefore inadmissible without a warning of the priviledge against self-incrimination.

9. Murphy was provided with a set of official instructions that a reasonable man would have interpreted to require him, upon threat of revocation of his probation, to answer truthfully all questions asked by his probation officer. Probation revocation surely constitutes a "substantial sanction."

Student Handout: ARGUMENTS AGAINST SUPPRESSION OF CONFESSION

1. The duty to answer truthfully is not the same as a requirement to answer. A reasonable person would choose not to answer the incriminating question. Failure to make the choice to remain silent makes any response admissible.

2. Murphy was not "in custody" and therefore not entitled to a warning about the priviledge against self-incrimination. The meeting with the probation officer was not in a locked room, and Murphy could have left at any time.

3. Murphy was not compelled to answer the questions asked by the probation officer. He was required to speak truthfully if he spoke but there was no requirement that he answer all questions.

4. A general obligation to appear and answer questions truthfully does not convert otherwise voluntary statements into compelled ones. For example, witnesses testifying in a trial take an oath to answer truthfully. They are not informed of their priviledge against self-incrimination before they give their testimony. If they are asked a question that asks for an answer that will incriminate them in criminal action, it is their responsibility to claim the Fifth Amendment priviledge.

5. "The Fifth Amendment speaks of compulsion. It does not preclude a witness from testifying voluntarily in matters which may incriminate him. If, therefore, he desires the protection of the privilege, he must claim it or he will not be considered to have been 'compelled' within the meaning of the Amendment."

United States v. *Monica*

6. A witness under compulsion to make disclosures must assert the privilege in a timely manner. Rather than answer the incriminating questions, the witness must assert the privilege against self-incrimination. A well-known exception to this general rule addresses the problem of confessions obtained from suspects in police custody.

Student Handout: ARGUMENTS AGAINST SUPPRESSION OF CONFESSION cont.

7. Murphy was not under arrest, and he was free to leave at the end of the meeting. A different question would be presented if he had been interviewed by his probation officer while being held in police custody or by the police themselves in a custodial setting.

8. Custodial settings contain "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak when he would not otherwise do so freely."

Miranda v. *Arizona*

9. Murphy's meeting with his probation officer was less intimidating than a custodial setting. The interview was arranged by appointment at a mutually convenient time. Murphy was free to leave at any time. His confession was not coerced.

10. There is no proof that refusal to answer the questions would have resulted in the revocation of Murphy's probation. There is no clear substantial sanction for refusing to answer the incriminating questions.

Student Handout: DECISION: *MINNESOTA* v. *MURPHY*

The U.S. Supreme Court reversed the decision of the Minnesota Supreme Court, stating that the Fifth Amendment did not prohibit the introduction into evidence of Murphy's admissions to the probation officer. The decision was based on the following points:

1. The general obligation to appear before his probation officer did not by itself convert Murphy's voluntary statements into compelled ones.

2. If a person is confronted with questions that, if answered, will incriminate him or her in a criminal action, that person **generally** has a responsibility to assert the Fifth Amendment. If he or she chooses to answer the question rather than plead the fifth, the choice is considered to be voluntary.

3. Murphy was not "in custody" for purposes of receiving *Miranda* protection because there was no formal arrest or restraint on freedom of movement.

4. Murphy was not deterred from claiming the privilege against self-incrimination by a reasonably perceived threat of revocation of his probation. There was no proof that failure to answer the questions would have resulted in revocation of his probation.

Appendix Materials

Bill of Rights

Articles in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

CONSTITUTION OF THE STATE OF MINNESOTA

Adopted October

Generally Revised November 5, 1974

Article 1. Bill of rights.
Article 2. Name and boundaries.
Article 3. Distribution of the powers of government.
Article 4. Legislative department.
Article 5. Executive department.
Article 6. Judiciary.
Article 7. Elective franchise.
Article 8. Impeachment and removal from office.
Article 9. Amendments to the constitution.
Article 10. Taxation.
Article 11. Appropriations and finances.
Article 12. Special legislation; local government.
Article 13. Miscellaneous subjects.
Article 20. Public highway system.

Preamble

We, the people of the state of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution.

ARTICLE I

BILL OF RIGHTS

Section 1. **Object of government.** Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good

Sec. 2. **Rights and privileges.** No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than as punishment for a crime of which the party has been convicted.

Sec. 3. **Liberty of the press.** The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right.

Sec. 4. **Trial by jury.** The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law. The legislature may provide that the agreement of five-sixths of a jury in a civil action or proceeding, after not less than six hours' deliberation, is a sufficient verdict.

Sec. 5. **No excessive bail or unusual punishments.** Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 6. **Rights of accused in criminal prosecutions.** In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the

crime shall have been committed, which county or district shall have been previously ascertained by law. The accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense.

Sec. 7. **Due process; prosecutions; double jeopardy; self-incrimination; bail; habeas corpus.** No person shall be held to answer for a criminal offense without due process of law, and no person shall be put twice in jeopardy of punishment for the same offense, nor be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or property without due process of law. All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great. The privilege of the writ of habeas corpus shall not be suspended unless the public safety requires it in case of rebellion or invasion.

Sec. 8. **Redress of injuries or wrongs.** Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

Sec. 9. **Treason defined.** Treason against the state consists only in levying war against the state, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court.

Sec. 10. **Unreasonable searches and seizures prohibited.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

Sec. 11. **Attainders, ex post facto laws and laws impairing contracts prohibited.** No bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

Sec. 12. **Imprisonment for debt; property exemption.** No person shall be imprisoned for debt in this state, but this shall not prevent the legislature from providing for imprisonment, or holding to bail, persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law. Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair or improvement of the same, and provided further, that such liability to seizure and sale shall also extend to all real property for any debt to any laborer or servant for labor or service performed.

Sec. 13. **Private property for public use.** Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.

Sec 14. **Mlilita power subordinate.** The military shall be subordinate to the civil power and no standing army shall be maintained in this state in times of peace.

Sec. 15. **Lands allodial; void agricultural leases.** All lands within the state are allodial and feudal tenures of every description with all their incidents are prohibited. Leases and grants of agricultural lands for a longer period than 21 years reserving rent or service of any kind shall be void.

Sec. 16. **Freedom of conscience; no preference to be given to any religious establishment or mode of worship.** The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of

his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permtitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

Sec. 17. **Religious tests and property qualifications prohibited.** No religious test or amount of property shall be required as a qualification for any office of public trust in the state. No religious test or amount of property shall be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

ARTICLE II

NAME AND BOUNDARIES

Section 1. **Name and boundaries; acceptance of organic act.** This state shall be called the state of Minnesota and shall consist of and have jurisdiction over the territory embraced in the act of Congress entitled, "An act to authorize the people of the Territory of Minnesota to form a constitution and state government, preparatory to their admission into the Union on equal footing with the original states, and the propositions contained in that act are hereby accepted, ratified and confirmed, and remain irrevocable without the consent of the United States.

Sec. 2. **Jurisdiction on boundary waters.** The state of Minnesota has concurrent jurisdiction on the Mississippi and on all other rivers and waters forming a common boundary with any other state or states. Navigable waters leading into the same, shall be common highways and forever free to citizens of the United States without any tax, duty, impost or toll therefor.

ARTICLE III

DISTRIBUTION OF THE POWERS OF GOVERNMENT

Section 1. **Division of powers.** The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

ARTICLE IV

LEGISLATIVE DEPARTMENT

Section 1. **Composition of legislature.** The legislature consists of the senate and house of representatives.

Sec. 2. **Apportionment of members.** The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.

Sec. 3. **Census enumeration apportionment; congressional and legislative district boundaries; senate districts.** At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts. Senators shall be chosen by single districts ofconvenient contiguous territory. No representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in a regular series.

Sec. 4. **Terms of office of senators and representatives; vacancies.** Representatives shall be chosen for a term of two years, except to fill a vacancy. Senators shall be chosen for a term of four years, except to fill a vacancy and except there shall be an entire new election of all the senators at the first election of representatives after each new legislative apportionment provided for in this article. The governor shall call elections to fill vacancies in either house of the legislature.

Sec. 5. **Restriction on holding office.** No senator or representative shall hold any other office under the authority of the United States or the state of Minnesota, except that of postmaster or of notary public. If elected or appointed to another office, a legislator may resign from the legislature by tendering his resignation to the governor.

Sec. 6. **Qualification of legislators; judging election returns and eligibility**. Senators and representatives shall be qualified voters of the state, and shall have resided one year in the state and six months immediately preceding the election in the district from which elected. Each house shall be the judge of the election returns and eligibility of its own members. The legislature shall prescribe by law the manner for taking evidence in cases of contested seats in either house.

Sec. 7. **Rules of government.** Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member; but no member shall be expelled a second time for the same offense.

Sec. 8. **Oath of office.** Each member and officer of the legislature before entering upon his duties shall take an oath or affirmation to support the Constitution of the United States, the constitution of this state, and to discharge faithfully the duties of his office to the best of his judgment and ability.

Sec. 9. **Compensation.** The compensation of senators and representatives shall be prescribed by law. No increase of compensation shall take effect during the period for which the members of the existing house of representatives may have been elected.

Sec. 10. **Privilege from arrest.** The members of each house in all cases except treason, felony and breach of the peace, shall be privileged from arrest during the session of their respective houses and in going to or returning from the same. For any speech or debate in either house they shall not be questioned in any other place.

Sec. 11. **Protest and dissent of members.** Two or more members of either house may dissent and protest against any act or resolution which they think injurious to the public or to any individual and have the reason of their dissent entered in the journal.

Sec. 12. **Biennial meetings; length of session; special sessions; length of adjournments.** The legislature shall meet at the seat of government in regular session in each biennium at the times prescribed by law for not exceeding a total of 120 legislative days. The legislature shall not meet in regular session, nor in any adjournment thereof after the first Monday following the third Saturday in May of

any year. After meeting at a time prescribed by law, the legislature may adjourn to another time. "Legislative day" shall be defined by law. A special session of the legislature may be called by the governor on extraordinary occasions. Neither house during a session of the legislature shall adjourn for more than three days (Sundays excepted) nor to any other place than that in which the two houses shall be assembled without the consent of the other house.

Sec. 13. **Quorum.** A majority of each house constitutes a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members in the manner and under the penalties it may provide.

Sec. 14. **Open sessions.** Each house shall be open to the public during its sessions except in cases which in its opinion require secrecy.

Sec. 15. **Officers; journals.** Each house shall elect its presiding officer and other officers as may be provided by law. Both houses shall keep journals of their proceedings, and from time to time publish the same, and the yeas and nays, when taken on any question, shall be entered in the journals.

Sec. 16. **Elections viva voce.** In all elections by the legislature members shall vote viva voce and their votes shall be entered in the journal.

Sec. 17. **Laws to embrace only one subject.** No law shall embrace more than one subject, which shall be expressed in its title.

Sec. 18. **Revenue bills to originate in house.** All bills for raising revenue shall originate in the house of representatives, but the senate may propose and concur with the amendments as on other bills.

Sec. 19. **Reporting of bills.** Every bill shall be reported on three different days in each house, unless, in case of urgency, two-thirds of the house where the bill is pending deem it expedient to dispense with this rule.

Sec. 20. **Enrollment of bills.** Every bill passed by both houses shall be enrolled and signed by the presiding officer of each house. Any presiding officer refusing to sign a bill passed by both houses shall thereafter be disqualified from any office of honor or profit in the state. Each house by rule shall provide the manner in which a bill shall be certified for presentation to the governor in case of such refusal.

Sec. 21. **Passage of bills on last day of session prohibited.** No bill shall be passed by either house upon the day prescribed for adjournment. This section shall not preclude the enrollment of a bill or its transmittal from one house to the other or to the executive for his signature.

Sec. 22. **Majority vote of all members to pass a law.** The style of all laws of this state shall be: "Be it enacted by the legislature of the state of Minnesota." No law shall be passed unless voted for by a majority of all the members elected to each house of the legislature, and the vote entered in the journal of each house.

Sec. 23. **Approval of bills by governor; action on veto.** Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. If after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered

in the journal of each house. Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days ofa session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill. At the time he signs the bill the governor shall append to it a statement of the items he vetoes and the vetoed items shall not take effect. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and the items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor.

Sec. 24. **Presentation of orders, resolutions, and votes to governor.** Each order resolution or vote requiring the concurrence of the two houses except such as relate to the business or adjournment of the legislature shall be presented to the governor and is subject to his veto as prescribed in case of a bill.

Sec. 25. **Disorderly conduct.** During a session each house may punish by imprisonment for not more than 24 hours any person not a member who is guilty of any disorderly or contemptuous behavior in its presence.

Sec. 26. **Banking laws; two-thirds votes.** Passage of a general banking law requires the vote of two-thirds of the members of each house of the legislature.

ARTICLE V

EXECUTIVE DEPARTMENT

Section 1. **Executive officers.** The executive department consists of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, who shall be chosen by the electors of the state. The governor and lieutenant governor shall be chosen jointly by a single vote applying to both offices in a manner prescribed by law.

Sec. 2. **Term of governor and lieutenant governor; qualifications.** The term of office for the governor and lieutenant governor is four years and until a successor is chosen and qualified. Each shall have attained the age of 25 years and, shall have been a bonafide resident of the state for one year next preceding his election, and shall be a citizen of the United States.

Sec. 3. **Powers and duties of governor.** The governor shall communicate by message to each session of the legislature information touching the state and country. He is commander-in-chief of the military and naval forces and may call them out to execute the laws, suppress insurrection and repel invasion. He may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to his duties. With the advice and consent of the senate he may appoint notaries public and other officers provided by law. He may appoint commissioners to take the acknowledgment of deeds or other instruments in writing to be used in the state. He shall take care that the laws be faithfully executed. He shall fill any vacancy that may occur in the offices of secretary of state,

treasurer, auditor, attorney general and the other state and district offices hereafter created by law until the end of the term for which the person who had vacated the office was elected or the first Monday in January following the next general election, whichever is sooner, and until a successor is chosen and qualified.

Sec. 4. **Terms and salaries of executive officers.** The term of office of the secretary of state, treasurer, attorney general and state auditor is four years and until a successor is chosen and qualified. The duties and salaries of the executive officers shall be prescribed by law.

Sec. 5. **Succession to offices of governor and lieutenant governor.** In case a vacancy occurs from any cause whatever in the office of governor, the lieutenant governor shall be governor during such vacancy. The compensation of the lieutenant governor shall be prescribed by law. The last elected presiding officer of the senate shall become lieutenant governor in case a vacancy occurs in that office. In case the governor is unable to discharge the powers and duties of his office, the same devolves on the lieutenant governor. The legislature may provide by law for the case of the removal, death, resignation, or inability both of the governor and lieutenant governor to discharge the duties of governor and may provide by law for continuity of government in periods of emergency resulting from disasters caused by enemy attack in this state, including but not limited to, succession to the powers and duties of public office and change of the seat of government.

Sec. 6. **Oath of office of state officers.** Each officer created by this article before entering upon his duties shall take an oath or affirmation to support the constitution of the United States and of this state and to discharge faithfully the duties of his office to the best of his judgment and ability.

Sec. 7. **Board of pardons.** The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. Its powers and duties shall be defined and regulated by law. The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment.

ARTICLE VI

JUDICIARY

Section 1. **Judicial power.** The judicial power of the state is vested in a supreme court, a court of appeals, ifestablished by the legislature, a district court and such other courts, judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish. [Amended, November 2, 1982]

Sec. 2. **Supreme court.** The supreme court consists of one chief judge and not less than six nor more than eight associate judges as the legislature may establish. It shall have original jurisdiction in such remedial cases as are prescribed by law, and appellate jurisdiction in all cases, but there shall be no trial by jury in the supreme court. The legislature may establish a court of appeals and provide by law for the number of its judges, who shall not be judges of any other court, and its organization and for the review of its decisions by the supreme court. The court of appeals shall have appellate jurisdiction over all courts, except the supreme court, and other appellate jurisdiction as prescribed by law. As provided by law judges of the court of appeals or of the district court may be assigned temporarily to act as judges of the supreme court upon its request and judges of the district court may be assigned temporarily by the supreme court to act as judges of the court of appeals. The supreme court shall appoint to

serve at its pleasure a clerk, a reporter, a state law librarian and other necessary employees. [Amended, November 2, 1982]

Sec. 3. **Jurisdiction of district court.** The district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.

Sec. 4. **Judicial districts; district judges.** The number and boundaries of judicial districts shall be established in the manner provided by law but the office of a district judge shall not be abolished during his term. There shall be two or more district judges in each district. Each judge of the district court in any district shall be a resident of that district at the time of his selection and during his continuance in office.

Sec. 5. **Qualifications; compensation.** Judges of the supreme court, the court of appeals and the district court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office. [Amended, November 2, 1982]

Sec. 6. **Holding other office.** A judge of the supreme court, the court of appeals or the district court shall not hold any office under the United States except a commission in a reserve component of the military forces of the United States and shall not hold any other office under this state. His term of office shall terminate at the time he files as a candidate for an elective office of the United States or for a nonjudicial office of this state. [Amended, November 2, 1982]

Sec. 7. **Term of office; election.** The term of office of all judges shall be six years and until their successors are qualified. They shall be elected by the voters from the area which they are to serve in the manner provided by law.

Sec. 8. **Vacancy.** Whenever there is a vacancy in the office of judge the governor shall appoint in the manner provided by law a qualified person to fill the vacancy until a successor is elected and qualified. The successor shall be elected for a six year term at the next general election occurring more than one year after the appointment.

Sec. 9. **Retirement, removal and discipline.** The legislature may provide by law for retirement of all judges and for the extension of the term of any judge who becomes eligible for retirement within three years after expiration of the term for which he is selected. The legislature may also provide for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice.

Sec. 10. **Retired judges.** As provided by law a retired judge may be assigned to hear and decide any cause over which the court to which he is assigned has jurisdiction.

Sec. 11. **Probate jurisdiction.** Original jurisdiction in law and equity for the administration of the estates of deceased persons and all guardianship and incompetency proceedings, including jurisdiction over the administration of trust estates and for the determination of taxes contingent upon death, shall be provided by law.

Sec. 12. **Abolition of probate court; status of judges.** If the probate court is abolished by law, judges of that court who are learned in the law shall become judges of the court that assumes jurisdiction of matters described in section 11.

Sec. 13. **District court clerks.** There shall be in each county one clerk of the district court whose qualifications, duties and compensation shall be prescribed by law. He shall serve at the pleasure of a majority of the judges of the district court in each district

ARTICLE VII

ELECTIVE FRANCHISE

Section 1. **Eligibility; place of voting; ineligible persons.** Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.

Sec. 2. **Residence.** For the purpose of voting no person loses residence solely by reason of his absence while employed in the service of the United States; nor while engaged upon the waters of this state or of the United States; nor while a student in any institution of learning; nor while kept at any almshouse or asylum; nor while confined in any public prison. No soldier, seaman or marine in the army or navy of the United States is a resident of this state solely in consequence of being stationed within the state.

Sec. 3. **Uniform oath at elections.** The legislature shall provide for a uniform oath or affirmation to be administered at elections and no person shall be compelled to take any other or different form of oath to entitle him to vote.

Sec. 4. **Civil process suspended on election day.** During the day on which an election is held no person shall be arrested by virtue of any civil process.

Sec. 5. **Elections by ballot.** All elections shall be by ballot except for such town officers as may be directed by law to be otherwise chosen.

Sec. 6. **Eligibility to hold office.** Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election, except as otherwise provided in this constitution, or the constitution and law of the United States.

Sec. 7. **Official year of state.** The official year for the state of Minnesota commences on the first Monday in January in each year and all terms of office terminate at that time. The general election shall be held on the first Tuesday after the first Monday in November in each even numbered year.

Sec. 8. **Election returns to secretary of state; board of canvassers.** The returns of every election for officeholders elected statewide shall be made to the secretary of state who shall call to his assistance two or more of the judges of the supreme court and two disinterested judges of the district courts. They shall constitute a board of canvassers to canvass the returns and declare the result within three days after the canvass.

Sec. 9. **Campaign spending limits.** The amount that may be spent by candidates for constitutional and legislative offices to campaign for nomination or election shall be limited by law. The legislature shall provide by law for disclosure of contributions and expenditures made to support or oppose candidates for state elective offices.[Adopted, November 4, 1980]

ARTICLE VIII

IMPEACHMENT AND REMOVAL FROM OFFICE

Section 1. **Impeachment powers.** The house of representatives has the sole power of impeachment through a concurrence of a majority of all its members. All impeachments shall be tried by the senate. When sitting for that purpose, senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the senators present.

Sec. 2. **Officers subject to impeachment; grounds; judgment.** The governor, secretary of state, treasurer, auditor, attorney general and the judges of the supreme court, court of appeals and district courts may be impeached for corrupt conduct in office or for crimes and misdemeanors; but judgment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in this state. The party convicted shall also be subject to indictment, trial, judgment and punishment according to law. [Amended, November 2, 1982]

Sec. 3. **Suspension.** No officer shall exercise the duties of his office after he has been impeached and before his acquittal.

Sec. 4. **Service of impeachment papers.** No person shall be tried on impeachment before he has been served with a copy thereof at least 20 days previous to the day set for trial.

Sec. 5. **Removal of inferior officers.** The legislature of this state may provide for the removal of inferior officers for malfeasance or nonfeasance in the performance of their duties.

ARTICLE IX

AMENDMENTS TO THE CONSTITUTION

Section 1. **Amendments; ratification.** A majority of the members elected to each house of the legislature may propose amendments to this constitution. Proposed amendments shall be published with the laws passed at the same session and submitted to the people for their approval or rejection at a general election. If a majority of all the electors voting at the election vote to ratify an amendment, it becomes a part of this constitution. If two or more amendments are submitted at the same time, voters shall vote for or against each separately.

Sec. 2. **Constitutional convention.** Two-thirds of the members elected to each house of the legislature may submit to the electors at the next general election the question of calling a convention to revise this constitution. If a majority of all the electors voting at the election vote for a convention, the legislature at its next session, shall provide by law for calling the convention. The convention shall consist of as many delegates as there are members of the house of representatives. Delegates shall be chosen in the same manner as members of the house of representatives and shall meet within three months after their election. Section 5 of Article IV of the constitution does not apply to election to the convention.

Sec. 3. **Submission to people of constitution drafted at convention.** A convention called to revise this constitution shall submit any revision to the people for approval or rejection at the next general election held not less than 90 days after submission of the revision. If three-fifths of all the

electors voting on the question vote to ratify the revision, it becomes a new constitution of the state of Minnesota.

ARTICLE X

TAXATION

Section 1. **Power of taxation; exemptions; legislative powers.** The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section. There may be exempted from taxation personal property not exceeding in value $200 for each household, individual or head of a family, and household goods and farm machinery as the legislature determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

Sec. 2. **Forestation.** To encourage and promote forestation and reforestation of lands whether owned by private persons or the public, laws may be enacted fixing in advance a definite and limited annual tax on the lands for a term of years and imposing a yield tax on the timber and other forest products at or after the end of the term.

Sec. 3. **Occupation tax; ores.** Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state an occupation tax on the valuation of all ores mined or produced, which tax shall be in addition to all other taxes provided by law. The tax is due on the first day of May in the calendar year next following the mining or producing. The valuation of ore for the purpose of determining the amount of tax shall be ascertained as provided by law. Funds derived from the tax shall be used as follows: 50 percent to the state general revenue fund, 40 percent for the support of elementary and secondary schools and ten percent for the general support of the university.

Sec. 4. **Motor fuel taxation.** The state may levy an excise tax upon any means or substance for propelling aircraft or for propelling or operating motor or other vehicles or other equipment used for airport purposes and not used on the public highways of this state.

Sec. 5. **Aircraft.** The legislature may tax aircraft using the air space overlying the state on a more onerous basis than other personal property. Any such tax on aircraft shall be in lieu of all other taxes. The legislature may impose the tax on aircraft of companies paying taxes under any gross earnings system of taxation notwithstanding that earnings from the aircraft are included in the earnings on which gross earnings taxes are computed. The law may exempt from taxation aircraft owned by a nonresident of the state temporarily using the air space overlying the state.

Sec. 6. **Taconite taxation.** Laws of Minnesota 1963, Chapter 81, relating to the taxation of taconite and semi-taconite, and facilities for the mining, production and beneficiation thereof shall not

be repealed, modified or amended, nor shall any laws in conflict therewith be valid until November 4, 1989. Laws may be enacted fixing or limiting for a period not extending beyond the year 1990, the tax to be imposed on persons engaged in (1) the mining, production or beneficiation of copper, (2) the mining, production or beneficiation of copper-nickel, or (3) the mining, production or beneficiation of nickel. Taxes imposed on the mining or quarrying of taconite or semi-taconite and on the production of iron ore concentrates therefrom, which are in lieu of a tax on real or personal property, shall not be considered to be occupation, royalty, or excise taxes within the meaning of this amendment.

Sec. 7. [Repealed, November 5, 1974]

Sec. 8. **Parimutuel betting.** The legislature may authorize on-track parimutuel betting on horse racing in a manner prescribed by law. [Adopted, November 2, 1982]

ARTICLE X

APPROPRIATIONS AND FINANCES

Section 1. **Money paid from state treasury.** No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

Sec. 2. **Credit of the state limited.** The credit of the state shall not be given or loaned in aid of any individual, association or corporation except as hereinafter provided.

Sec. 3. **Internal improvements prohibited; exceptions.** The state shall not be a party in carrying on works of internal improvements except as authorized by this constitution. If grants have been made to the state especially dedicated to specific purposes, the state shall devote the proceeds of the grants to those purposes and may pledge or appropriate the revenues derived from the works in aid of their completion.

Sec. 4. **Power to contract public debt; public debt defined.** The state may contract public debts for which its full faith, credit and taxing powers may be pledged at the times and in the manner authorized by law, but only for the purposes and subject to the conditions stated in section 5. Public debt includes any obligation payable directly in whole or in part from a tax of state wide application on any class of property, income, transaction or privilege, but does not include any obligation which is payable from revenues other than taxes.

Sec. 5. **Public debt and works of internal improvement; purposes.** Public debt may be contracted and works of internal improvements carried on for the following purposes:

(a) to acquire and to better public land and buildings and other public improvements of a capital nature and to provide money to be appropriated or loaned to any agency or political subdivision of the state for such purposes if the law authorizing the debt is adopted by the vote of at least three-fifths of the members of each house of the legislature;

(b) to repel invasion or suppress insurrection;

(c) to borrow temporarily as authorized in section 6;

(d) to refund outstanding bonds of the state or any of its agencies whether or not the full faith and credit of the state has been pledged for the payment of the bonds;

(e) to establish and maintain highways subject to the limitations of article XIV;

(f) to promote forestation and prevent and abate forest fires, including the compulsory clearing and improving of wild lands whether public or private;

(g) to construct, improve and operate airports and other air navigation facilities;

(h) to develop the state's agricultural resources by extending credit on real estate security in the manner and on the terms and conditions prescribed by law;

(i) to improve and rehabilitate railroad rights-of-way and other rail facilities whether public or private, provided that bonds issued and unpaid shall not at any time exceed $200,000,000 par value; and

(j) as otherwise authorized in this constitution.

As authorized by law political subdivisions may engage in the works permitted by (f), (g), and (i) and contract debt therefor. [Amended, November 2, 1982]

Sec. 6. **Certificates of indebtedness.** As authorized by law certificates of indebtedness may be issued during a biennium, commencing on July 1 in each odd-numbered year and ending on and including June 30 in the next odd-numbered year, in anticipation of the collection of taxes levied for and other revenues appropriated to any fund of the state for expenditure during that biennium.

No certificates shall be issued in an amount which with interest thereon to maturity, added to the then outstanding certificates against a fund and interest thereon to maturity, will exceed the then unexpended balance of all money which will be credited to that fund during the biennium under existing laws. The maturities of certificates may be extended by refunding to a date not later than December 1 of the first full calendar year following the biennium in which the certificates were issued. If money on hand in any fund is not sufficient to pay all non-refunding certificates of indebtedness issued on a fund during any biennium and all certificates refunding the same, plus interest thereon, which are outstanding on December 1 immediately following the close of the biennium, the state auditor shall levy upon all taxable property in the state a tax collectible in the ensuing year sufficient to pay the same on or before December 1 of the ensuing year with interest to the date or dates of payment.

Sec. 7. **Bonds.** Public debt other than certificates of indebtedness authorized in section 6 shall be evidenced by the issuance of bonds of the state. All bonds issued under the provisions of this section shall mature not more than 20 years from their respective dates of issue and each law authorizing the issuance of bonds shall distinctly specify the purposes thereof and the maximum amount of the proceeds authorized to be expended for each purpose. The state treasurer shall maintain a separate and special state bond fund on his official books and records. When the full faith and credit of the state has been pledged for the payment of bonds, the state auditor shall levy each year on all taxable property within the state a tax sufficient with the balance then on hand in the fund to pay all principal and interest on bonds issued under this section due and to become due within the ensuing year and to and including July 1 in the second ensuing year. The legislature by law may appropriate funds from any source to the state bond fund. The amount of money actually received and on hand pursuant to appropriations prior to the levy of the tax in any year shall be used to reduce the amount of tax otherwise required to be levied.

Sec. 8. **Permanent school fund; source; investment; board of investment.** The permanent school fund of the state consists of (a) the proceeds of lands granted by the United States for the use of schools within each township, (b) the proceeds derived from swamp lands granted to the state, (c) all cash and investments credited to the permanent school fund and to the swamp land fund, and (d) all cash and investments credited to the internal improvement land fund and the lands therein. No portion of these lands shall be sold otherwise than at public sale, and in the manner provided by law. All funds arising from the sale or other disposition of the lands, or income accruing in any way before the sale or disposition thereof shall be credited to the permanent school fund. Within limitations prescribed by law, the fund shall be invested to secure the maximum return consistent with the maintenance of the perpetu-

ity of the fund. The principal of the permanent school fund shall be perpetual and inviolate forever. This does not prevent the sale of investments at less than the cost to the fund; however, all losses not offset by gains shall be repaid to the fund from the interest and dividends earned thereafter. The net interest and dividends arising from the fund shall be distributed to the different school districts of the state in a manner prescribed by law.

A board of investment consisting of the governor, the state auditor, the state treasurer, the secretary of state, and the attorney general is hereby constituted for the purpose of administering and directing the investment of all state funds. The board shall not permit state funds to be used for the underwriting or direct purchase of municipal securities from the issuer or the issuer's agent. [Amended, November 6, 1984]

Sec. 9. **Investment of permanent university fund; restrictions.** The permanent university fund of this state may be loaned to or invested in the bonds of any county, school district, city or town of this state and in first mortgage loans secured upon improved and cultivated farm lands of this state, but no such investment or loan shall be made until approved by the board of investment; nor shall a loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 percent of the assessed valuation of the taxable property of the county, school district, city or town issuing the bonds; nor shall any farm loan or investment be made when the investment or loan would exceed 30 percent of the actual cash value of the farm land mortgaged to secure the investment; nor shall investments or loans be made at a lower rate of interest than two percent per annum nor for a shorter period than one year nor for a longer period than 30 years.

Sec. 10. **Exchange of public lands; reservation of rights.** As the legislature may provide, any of the public lands of the state, including lands held in trust for any purpose, may be exchanged for any publicly or privately held lands with the unaninious approval of the governor, the attorney general and the state auditor. Lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject. The state shall reserve all mineral and water power rights in lands transferred by the state. [Amended, November 6, 1984]

Sec. 11. **Timber lands set apart as state forests; disposition of revenue.** School and other public lands of the state better adapted for the production of timber than for agriculture may be set apart as state school forests, or other state forests as the legislature may provide. The legislature may also provide for their management on forestry principles. The net revenue therefrom shall be used for the purposes for which the lands were granted to the state.

Sec. 12. **County, township or municipal aid to railroads limited.** The legislature shall not authorize any county, township or municipal corporation to become indebted to aid in the construction or equipment of railroads to any amount that exceeds five percent of the value of the taxable property within that county, township or municipal corporation. The amount of taxable property shall be determined by the last assessment previous to the incurring of the indebtedness.

Sec. 13. **Safekeeping state funds; security; deposit of funds; embezzlement.** All officers and other persons charged with the safekeeping of state funds shall be required to give ample security for funds received by them and to keep an accurate entry of each sum received and of each payment and transfer. If any person converts to his own use in any manner or form, or shall loan, with or without interest, or shall deposit in his own name, or otherwise than in the name of the state of Minnesota; or shall deposit in banks or with any person or persons or exchange for other funds or property, any portion of the funds of the state or the school funds aforesaid, except in the manner prescribed by law,

every such act shall be and constitute an embezzlement of so much of the aforesaid state and school funds, or either of the same, as shall thus be taken, or loaned, or deposited or exchanged, and shall be a felony. Any failure to pay over, produce or account for the state school funds, or any part of the same entrusted to such officer or persons as by law required on demand, shall be held and be taken to be prima facie evidence of such embezzlement.

ARTICLE XI

SPECIAL LEGISLATION; LOCAL GOVERNMENT

Section 1. **Prohibition of special legislation; particular subjects.** In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2. Whether a general law could have been made applicable in any case shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law authorizing the laying out, opening, altering, vacating or maintaining of roads, highways, streets or alleys; remitting fines, penalties or foifeitures; changing the names of persons, places, lakes or rivers; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights on minors; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; granting divorces; exempting property from taxation or regulating the rate of interest on money; creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever or authorizing public taxation for a private purpose. The inhibitions of local or special laws in this section shall not prevent the passage of general laws on any of the subjects enumerated.

Sec. 2. **Special laws; local government.** Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties to which it applies. The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject. The legislature may repeal any existing special or local law, but shall not amend, extend or modify any of the same except as provided in this section.

Sec. 3. **Local government; legislation affecting.** The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof for their elective and appointive officers including qualifications for office and for the transfer of county seats. A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question.

Sec. 4. **Home rule charter.** Any local government unit when authorized by law may adopt a home rule charter for its government. A charter shall become effective if approved by such majority of the voters of the local government unit as the legislature prescribes by general law. If a charter provides

for the consolidation or separation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

Sec. 5. **Charter commissions.** The legislature shall provide by law for charter commissions. Notwithstanding any other constitutional limitations the legislature may require that commission members be freeholders, provide for their appointment by judges of the district court, and permit any member to hold any other elective or appointive office other than judicial. Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in any other manner provided by law. A local government unit may repeal its home rule charter and adopt a statutory form of government or a new charter upon the same majority vote as is required by law for the adoption of a charter in the first instance.

ARTICLE XIII

MISCELLANEOUS SUBJECTS

Section 1. **Uniform system of public schools.** The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

Sec. 2. **Prohibition as to aiding sectarian school.** In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.

Sec. 3. **University of Minnesota.** All the rights, immunities, franchises and endowments heretofore granted or conferred upon the university of Minnesota are perpetuated unto the university.

Sec. 4. **Lands taken for public way or use; compensation; common carriers.** Land may be taken for public way and for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for land and for the damages arising from taking it. All corporations which are common carriers enjoying the right of way in pursuance of the provisions of this section shall be bound to carry the mineral, agricultural and other productions of manufacturers on equal and reasonable terms.

Sec. 5. **Prohibition of lotteries.** The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state.

Sec. 6. **Prohibition of combinations to affect markets.** Any combination of persons either as individuals or as members or officers of any corporation to monopolize markets for food products in this state or to interfere with, or restrict the freedom of markets is a criminal conspiracy and shall be punished as the legislature may provide.

Sec. 7. **No license required to peddle.** Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.

Sec. 8. **Veterans' bonus.** The state may pay an adjusted compensation to persons who served in the armed forces of the United States during the period of the Vietnam conflict. Whenever authorized and in the amounts and on the terms fixed by law, the state may expend monies and pledge the public credit to provide money for the purposes of this section. The duration of the Vietnam conflict may be defined by law.

Sec. 9. **Militia organization.** The legislature shall pass laws necessary for the organization, discipline and service of the militia of the state.

Sec. 10. **Seat of government.** The seat of government of the state is in the city of St. Paul. The legislature may provide by law for a change of the seat of government by a vote of the people, or may locate the same upon the land granted by Congress for a seat of government. If the seat of government is changed, the capitol building and grounds shall be dedicated to an institution for the promotion of science, literature and the arts to be organized by the legislature of the state. The Minnesota Historical Society shall always be a department of this institution.

Sec. 11. **State seal.** A seal of the state shall be kept by the secretary of state and be used by him officially. It shall be called the great seal of the state of Minnesota.

ARTICLE XIV

PUBLIC HIGHWAY SYSTEM

Section 1. **Authority of state; participation of political subdivisions.** The state may construct, improve and maintain public highways, may assist political subdivisions in this work and by law may authorize any political subdivision to aid in highway work within its boundaries.

Sec. 2. **Trunk highway system.** There is hereby created a trunk highway system which shall be constructed, improved and maintained as public highways by the state. The highways shall extend as nearly as possible along the routes number 1 through 70 described in the constitutional amendment adopted November 2, 1920, and the routes described in any act of the legislature which has made or hereafter makes a route a part of the trunk highway system.

The legislature may add by law new routes to the trunk highway system. The trunk highway system may not exceed 12,200 miles in extent, except the legislature may add trunk highways in excess of the mileage limitation as necessary or expedient to take advantage of any federal aid made available by the United States to the state of Minnesota.

Any route added by the legislature to the trunk highway system may be relocated or removed from the system as provided by law. The definite location of trunk highways numbered 1 through 70 may be relocated as provided by law but no relocation shall cause a deviation from the starting points or terminals nor cause any deviation from the various villages and cities through which the routes are to pass under the constitutional amendment adopted November 2, 1920. The location of routes may be determined by boards, officers or tribunals in the manner prescribed by law.

Sec. 3. **County state-aid highway system.** A county state-aid highway system shall be constructed, improved and maintained by the counties as public highways in the manner provided by law. The system shall include streets in municipalities of less than 5,000 population where necessary to provide an integrated and coordinated highway system and may include similar streets in larger municipalities.

Sec. 4. **Municipal state-aid street system.** A municipal state-aid street system shall be constructed, improved and maintained as public highways by municipalities having a population of 5,000 or more in the manner provided by law.

Sec. 5. **Highway user tax distribution fund.** There is hereby created a highway user tax distribution fund to be used solely for highway purposes as specified in this article. The fund consists of the proceeds of any taxes authorized by sections 9 and 10 of this article. The net proceeds of the taxes shall be apportioned: 62 percent to the trunk highway fund; 29 percent to the county state-aid highway fund; nine percent to the municipal state-aid street fund. Five percent of the net proceeds of the highway user tax distribution fund may be set aside and apportioned by law to one or more of the three foregoing funds. The balance of the highway user tax distribution fund shall be transferred to the trunk highway fund, the county state-aid highway fund, and the municipal state-aid street fund in accordance with the percentages set forth in this section. No change in the apportionment of the five percent may be made within six years of the last previous change.

Sec. 6. **Trunk highway fund.** There is hereby created a trunk highway fund which shall be used solely for the purposes specified in section 2 of this article and the payment of principal and interest of any bonds issued under the authority of section 1 of this article and any bonds issued for trunk highway purposes prior to July 1, 1957. All payments of principal and interest on bonds issued shall be a first charge on money coming into this fund during the year in which the principal or interest is payable.

Sec. 7. **County state-aid highway fund.** There is hereby created a county state-aid highway fund. The county state-aid highway fund shall be apportioned among the counties as provided by law. The funds apportioned shall be used by the counties as provided by law for aid in the construction, improvement and maintenance of county state-aid highways. The legislature may authorize the counties by law to use a part of the funds apportioned to them to aid in the construction, improvement and maintenance of other county highways, township roads, municipal streets and any other public highways, including but not limited to trunk highways and municipal state-aid streets within the respective counties.

Sec. 8. **Municipal state-aid street fund.** There is hereby created a municipal state-aid street fund to be apportioned as provided by law among municipalities having a population of 5,000 or more. The fund shall be used by municipalities as provided by law for the construction, improvement and maintenance of municipal state-aid streets. The legislature may authorize municipalities to use a part of the fund in the construction, improvement and maintenance of other municipal streets, trunk highways, and county state-aid highways within the counties in which the municipality is located.

Sec. 9. **Taxation of motor vehicles.** The legislature by law may tax motor vehicles using the public streets and highways on a more onerous basis than other personal property. Any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes imposed by political subdivisions solely for highway purposes. The legislature may impose this tax on motor vehicles of companies paying taxes under the gross earnings system of taxation notwithstanding that earnings from the vehicles may be included in the earnings on which gross earnings taxes are computed. The proceeds of the tax shall be paid into the highway user tax distribution fund. The law may exempt from taxation any motor vehicle owned by a nonresident of the state properly licensed in another state and transiently or temporarily using the streets and highways of the state.

Sec. 10. **Taxation of motor fuel.** The legislature may levy an excise tax on any means or substance used for propelling vehicles on the public highways of this state or on the business of selling it. The proceeds of the tax shall be paid into the highway user tax distribution fund.

Sec. 11. **Highway bonds.** The legislature may provide by law for the sale of bonds to carry out the provisions of section 2. The proceeds shall be paid into the trunk highway fund. Any bonds shall mature serially over a term not exceeding 20 years and shall not be sold for less than par and accrued interest. If the trunk highway fund is not adequate to pay principal and interest of these bonds when due, the legislature may levy on all taxable property of the state in an amount sufficient to meet the deficiency or it may appropriate to the fund money in the state treasury not otherwise appropriated.
[Amended, November 2, 1982]